
Costs Decision

Site visit made on 25 May 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2022

Costs application in relation to Appeal Ref: APP/U4230/W/21/3289447 200 Weaste Lane, Salford M5 5JL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Cheung against the decision of Salford City Council.
 - The appeal was against the Council's refusal to grant planning permission for change of use of vacant dwellinghouse (C3 use) to an 8 bed HMO (sui generis), together with a single storey rear extension.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The applicant has applied for a full award of costs. Parties are aware that irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant contends that the Council behaved unreasonably during the processing of the application and that this has resulted in unnecessary expense to the applicant in having to make an appeal.
4. In summary, with regard to procedural matters, the applicant considers that there was a lack of cooperation between the parties, a failure to adhere to deadlines and a delay in providing information. With regard to substantive matters, the applicant considers that the Council has relied upon vague, generalised or inaccurate assertions about a proposal's impact that are unsupported by objective analysis; not determined similar cases in a consistent manner and refused planning permission on a planning ground capable of being dealt with by condition.
5. I accept that the appellant was informed by the Case Officer (CO) that the proposal was acceptable in principle¹, as in the opinion of the CO the

¹ To my mind, the principle of a change of use of a C3 dwelling to a HMO in the area is acceptable (as evidenced by the decisions of the Council, referred to by the applicant, to allow applications of this nature within the location of the site). However, allowing such a proposal is also subject to it being in accordance with all relevant development plan policies. In this instance, the Council concluded that the proposal did not accord

proposal would not result in an overconcentration of Houses in Multiple Occupation (HMOs) in the area. However, the Determining Officer (DO) held a different view with regards to the matter of overconcentration, and the application was refused with this being one of the reasons. The applicant acknowledges that advice given by COs does not constitute a Decision. That said, the applicant suggests that there is an expectation that advice given by COs should reflect the Council's position.

6. It is clear from the evidence that the CO caveated their advice explaining that their recommendation did not constitute a Decision. The DO is entitled to reach a different view to the CO, and the matter of overconcentration is one of judgement. Although this may surprise applicants at times it does occur; and undoubtedly most consultants acting on behalf of applicants would be aware of such procedures for determining applications.
7. I consider that it would have been better customer service for the matter to have been communicated to the applicant before the application was determined, to provide an opportunity for them to decide whether to progress the application. However, the site's location to other HMOs could not have been altered. As such, progressing the application would still have resulted in a refusal of the application based on the overconcentration of HMOs on the western side of Weaste Lane. Consequently, the applicant would still have had to make an appeal for the matter to be given further consideration.
8. I acknowledge the applicant's opinion with regard to the reports² drawn upon by the Council to inform its decision. However, as I outlined in the Appeal Decision, I consider the Council did not behave unreasonably in drawing upon these reports to inform its decision. Additionally, the Council's Report³ does include data related specifically to the Weaste & Seedley ward.
9. The applicant is of the opinion that concerns relating to reason for refusal one could have been addressed via a condition related to a Residents Management Strategy. Although I accept that a condition of this nature may have been able to address certain aspects, I am not persuaded that one or more conditions could have overcome all concerns relating to the matter; or that any such conditions would have satisfied all the relevant conditions tests⁴.
10. With regard to the proposed rear extension and reason for refusal 2, I accept that the impact of a proposal on the living conditions of occupiers of neighbouring properties can also often involve matters of judgement. However, unlike reason for refusal one, if the intention to refuse the application for this reason had been communicated to the applicant before determination, the applicant could have amended the plans, as has been done during the appeal, so that the proposed extension adhered to the

with relevant development plan policies, due partly to the overconcentration of HMOs identified, and refused the application.

² In particular, 'Small houses in multiple occupation: Evidence to justify the purpose and extent of an Article 4 Direction – Salford City Council, October 2017', which draws upon 'Evidence Gathering – Housing in Multiple Occupation and possible planning responses - Department for Communities and Local Government, September 2008'.

³ 'Small houses in multiple occupation: Evidence to justify the purpose and extent of an Article 4 Direction – Salford City Council, October 2017'

⁴ As outlined in the Planning Practice Guidance Paragraph: 003 Reference ID: 21a-003-20190723

relevant permitted development criteria. Given that the Council has not suggested that the proposed extension as amended does not constitute permitted development, this reason for refusal could have been avoided.

11. Similarly, with regard to reason for refusal 3, if the intension to refuse the application for this reason had been communicated to the applicant before determination, the applicant could have submitted additional plans, as has been done during the appeal, to demonstrate to the Council that the extent of floor area in bedroom 8 adhered to the Council's standards and therefore complied with relevant policies. As such, this reason for refusal could also have been avoided.
12. The applicant contends that the Council has not determined similar applications in a consistent manner. I note the 2 applications the applicant refers to, both of which were for a change of use of a C3 dwelling to a HMO, which the Council approved, the locations of which are close to the appeal site.
13. I have not been provided with the full details of the cases and I am therefore unable to make any detailed comparisons between them and the appeal site. However, the applicant points out (with reference to Figure 1 in the costs application) that in both instances there are HMOs within the vicinity of the application sites, but in both instances the Council considered that there was no issue as regards overconcentration. The matter involves a judgement, and the Council evidently reached an opinion in the 2 instances of the applications allowed, which differed to the opinion it reached in respect of the appeal proposal. Although I do not have the full details before me, I understand how the Council could legitimately reach different views in respect of the 2 applications allowed and the one refused, due to site specific contextual differences.
14. Having considered all the evidence presented by each of the parties, ultimately, I consider the Council would have at minimum refused the application for the reasons outlined in reason for refusal one. Furthermore, I do not think the range of matters associated with this reason for refusal could have been overcome by planning conditions. As such, with regard to this matter, although the Council could have dealt with it better from a customer service perspective, I conclude that the Council's behaviour has not resulted in any unnecessary or wasted expense to the applicant in the appeal process.
15. However, with regard to reasons for refusal 2 and 3, I consider the Council did behave unreasonably; and as these reasons for refusal could have been avoided, I conclude that it has been demonstrated that the Council's unreasonable behaviour has resulted in unnecessary and wasted expense to the applicant in the appeal process, as described in the PPG, due to having to address these reasons for refusal. I therefore conclude that an award of partial costs is justified

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY

ORDERED that Salford City Council shall pay to Mr Cheung the costs of the unnecessary time spent and the expense incurred by the appellant in the appeals proceedings, described in the headings of this decision, as a result of the unreasonable behaviour outlined.

17. The appellant is now invited to submit to Salford City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Williamson

INSPECTOR