

Costs Decision

Inquiry Held on 2 August 2022

Site visit made on 5 August 2022

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/B0230/W/22/3294931 Lea Halls, Bute Street, Luton, LU1 2WJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the Borough of Luton for a full award of costs against Luton Halls Properties Ltd.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the conversion and change of use of student accommodation (Sui Generis) to 132 flats (52 one bedroom, 40 two-bedroom, 36 three-bedroom and 4 four-bedroom), together with construction of new entrance canopies added to existing buildings and alterations to parking provision, boundary treatments, lighting, cycle stores, bin stores, landscaping, public realm works, after demolition of existing on-site warden bungalow.
-

Decision

1. The application for an award of costs is refused.

The submissions for the Council of the Borough of Luton

2. The appellant submitted an amended layout to replace an area for car parking with communal open space. The appellant undertook their own consultation process on this amendment.
3. The Council state that this consultation process caused confusion with internal and external consultees which they then had to resolve. The Council repeatedly advised against such an amendment which they felt warranted a new application. It contravened Annexe M of the Procedural Guide: Planning Appeals.
4. The Council state that they were put to unnecessary expense in having to deal with the consultation queries, correspondence with the Inspectorate, additional coverage in proofs of evidence and rebuttals, section 106 agreement and it wasted inquiry time.

The response by Luton Halls Properties Ltd

5. The consultation exercise was launched three weeks after the Council's stated intention to make a costs application.
6. The Council opposed the amendment and refused to engage with it, including the consultation process. All the work was done by the appellant.

7. None of the Council's Proofs of Evidence refer to this amendment. The only mention is in the rebuttal of Ms Chapman at paragraph 2.2.
8. The appellant was entitled to consider the amendment to improve the living standards of the occupants. Examples of other accepted amendments post determination are provided.
9. Any costs involved in consideration of the amendments would be within the general level of administration involved at an inquiry.

Reasons

10. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
11. The appellant undertook the consultation process themselves. The consultation process included an explanatory letter dated 4 July. This set out not only the changes proposed but also the appeal process. The Council do not state how many consultees they had to help or how they had to clarify matters, but the appellant's covering letter does explain the situation, so they did what can only be reasonably expected.
12. It is a matter of practice that post determination amendments are sometimes submitted in the run up to inquiries, notwithstanding the Procedural Guidance. The appellant's intent was not unusual in this action.
13. Whilst the Council advised about their objection to the change from the outset, its acceptability could not be considered until the start of the inquiry when both parties had the opportunity to comment.
14. The Council's evidence does not extend to this consideration of the potential amendment, save for minimal coverage in a rebuttal, so they were not put to significant additional time. Similarly, the matter took minimal time at the inquiry. In terms of e-mails with the Inspectorate these were succinct and would not be expected to be onerous. The section 106 agreement has reference to a possible amendment but again this is not extensive or particularly time consuming.

Conclusion

15. For the above reasons I conclude that the appellant has not acted unreasonably, and that the applicant has not been put to wasted time and expense in its participation in the appeal. Therefore, an award of costs as described in the Planning Practice Guidance is not justified.

John Longmuir

INSPECTOR