
Costs Decision

Site visit made on 10 January 2023

by K Townend Bsc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2023

Costs application in relation to Appeal Ref: APP/Z4310/W/22/3305449 22 Cranborne Road, Liverpool L15 2HX

- 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 Simon Lawrence of SGL Properties for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for change of use from 6-bedroom HMO (C4) to 7-bedroom HMO (sui generis).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and, that the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. Paragraph 047 of the PPG¹ indicates that local planning authorities will be at risk of a procedural award being made against them for reasons including lack of co-operation and failure to adhere to deadlines. Paragraph 049 of the PPG² indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. On procedural grounds the applicant's claim is that the Council acted unreasonably in not determining the application within 8 weeks; the length of time taken to determine the application and the lack of engagement. The applicant claims that the lack of engagement has resulted in a need to submit an appeal against non-determination, without the benefit of a reasoned decision notice. However, this is not the case as the Council determined the application and the appeal is submitted against the refusal.
5. With regard to timeliness, the applicant's costs claim details the application validation date, the determination deadline and the decision date. Although the application took longer than 8 weeks and the delay was frustrating for the applicant, even if the decision was made earlier this would not have avoided

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

the need for the appeal. The Council are also not bound by the Framework to request further information from an applicant and, even if additional information had been provided, this would also not have avoided the appeal. I therefore find no unreasonable behaviour on procedural grounds.

6. On the substantive grounds the applicant's claim is that the Council acted unreasonably in taking account of an immaterial consideration in assessing the proposal as a loss of a family dwelling; asserting a non-existing reversionary position as a family dwelling; and in not considering the context in assessing outlook and light.
7. On the matter of outlook and light the Council have clearly set out, within both the officer report and the appeal statement, the justification for this reason for refusal and related the concerns to relevant development plan policies. I have found that the Council had reasonable concerns about the impact of the proposed development which justified the refusal and therefore no unreasonable behaviour on this point.
8. In respect of the consideration of the loss of a family dwelling I have had regard to the evidence provided by both parties. The appeal proposal is for a change of use from a small HMO (C4) to a large HMO (sui generis). The current proposal does not result in the loss of a family dwelling as the property has not been a family dwelling for some time, as evidenced by the previously granted certificate of lawfulness by the Council. For these reasons subsections 2 and 3 of Policy H11 of the LP are not relevant to the current appeal. As such, I conclude that the Council has behaved unreasonably in assessing the application as a loss of a family dwelling. This has led to unnecessary and wasted expense in having to address this matter in their appeal.

Conclusion

9. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Liverpool City Council shall pay to Simon Lawrence of SGL Properties the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first and second of the Council's reasons for refusal, which concerned alleged conflict with Policies H10 and H11 of the Liverpool City Council Liverpool Local Plan, 2022, and concerned alleged loss of family housing.
11. The applicant is now invited to submit to the 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. In the event that 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.

K Townend

INSPECTOR