



Costs Decision

Site visit made on 21 December 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Costs application in relation to APP/Z4310/W/22/3298397

61 Garmoyle Road, Liverpool L15 3JH

- 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 Simon Lawrence (SGL Property) for a full award of costs against Liverpool City Council.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for the change of use from 6 bed HMO (C4) to 7 bed HMO (sui generis).
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. It sets out examples of unreasonable behaviour which may give rise to a procedural award of costs, including a failure to adhere to deadlines and states that, 'if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation'
3. In this case, an application was submitted on 5 January 2022, which was not determined by the deadline of 10 March 2022. After an initial request for an update, the Council advised that the application would likely be refused. Following further requests for updates, the Council confirmed that this would be the case on 6 May 2022. Prior to the issue of the decision notice, the applicant lodged an appeal. The Council has since acknowledged that the delay was due to a high volume of applications but on the evidence before me no such explanation was provided during the application process.
4. The Council cited the lack of a Certificate of Lawfulness establishing the current use of the property as a house in multiple occupation (HMO), such that it would have refused the application due to its effect on the housing mix of the area by resulting in the loss of a family dwelling. It can be seen from my decision that I do not agree, and am satisfied that the lawful use of the property is established as a HMO.
5. However, even if the Council's approach on this point, combined with its failure to determine the application, were to amount to unreasonable behaviour, I do not consider that this led to wasted expense on the part of the applicant. The Council has advised that it would also have refused the application due to its effect on the living conditions of future occupiers. As can be seen from my decision, I too have found such harm.

6. As such, even if the application had been determined by the Council in the initial timeframe and assessed on the basis of the current, lawful use of the property being a 6 bed HMO, it is clear from the Council's statement that the application still would have been refused on the basis of harm to the living conditions of future occupiers. Accordingly, an appeal would have been a likely outcome and the applicant, in choosing to submit the appeal citing non-determination, did not therefore incur any additional expense.
7. The applicant has further argued that the Council acted unreasonably in failing to take account of a previous appeal decision and associated costs award relating to the site. However, each application is to be determined on its own merits and circumstances. The previous appeal decision and costs award relate to the erection of a single storey extension, and I do not consider that it was unreasonable of the Council to not take this into account in connection with the current application.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For the reasons given above, I refuse the application for an award of costs.

C Rafferty

INSPECTOR