



Costs Decision

Site visit made on 17 January 2023

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Costs application in relation to Appeal Ref: APP/M4320/W/22/3302947 50 Elm Road, Seaforth L21 1BL

- 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 A Rolfe for a full award of costs against Sefton Council.
 - The appeal was against the grant of planning permission subject to conditions for the change of use from dwellinghouse (Class C3) into a House in Multiple Occupation (HMO) (Sui Generis) (7 persons) (Alternative to DC/2021/02343 refused 26/11/21).
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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 costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Planning Committee decided to attach additional planning conditions to the permission contrary to advice of their professional officers who had produced a written report analysing the effects of the proposal on a number of matters including noise and refuse.
4. Authorities are not bound to accept the recommendations of their officers, but the PPG states that local planning authorities are at risk of an award of costs if they rely on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. Imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions is also listed as an example of unreasonable behaviour.
6. There was sufficient evidence submitted with the application to demonstrate that, subject to the other attached planning conditions, matters relating to noise and refuse storage could be adequately and appropriately dealt with. I note that the Council's own planning officers and environmental health team came to the same conclusion.

7. I also found that the financial burden placed on the applicant for the proposed works without the assurance of a permanent permission to fail the test of reasonableness.
8. In addition, there was little evidence to suggest that the proposal would inevitably result in anti-social behaviour or an increase in crime. Consequently, the expressed fear of anti-social behaviour and crime was a vague and generalised assertion about the proposal's impact, which was unsupported by objective analysis and not supported evidentially.
9. As such, the Council has failed to produce evidence to substantiate why conditions (1,2 and 6) are reasonable and necessary, in the face of advice from its officers that the issues were acceptable, subject to other conditions.
10. I therefore find that the Council has acted unreasonably in imposing the disputed conditions and the planning condition for a management plan, and that the applicant's expense in mounting the appeal has been unnecessarily incurred. As such a full award of costs is justified.

Costs Order

11. 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 other enabling powers in that behalf, IT IS HEREBY ORDERED that Sefton Council shall pay to Mr A Rolfe, the costs of the appeal proceedings described in the heading of this decision.
12. 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 an 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.

Mark Caine

INSPECTOR