



Costs Decision

Site visit made on 7 March 2023

by K Lancaster BA (hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Costs application in relation to Appeal Ref: APP/Y5420/W/22/3311734 37 Boundary Road, Tottenham, London N22 6AS

- 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 Mrs M Larijani on behalf of KIKS Group Ltd for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of planning permission for the change of use from a dwelling (C3 use) to a 6-bedroom, 6 Person HMO (C4 Use) including rear dormer and installation of two rooflights in front roof slope.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG¹ provides that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably with respect to the procedural matters, such as demonstrating a lack of co-operation with the other party, or in relation to the substance matter of the appeal, for example, by unreasonably refusing planning applications.
3. The applicant is seeking a full award of costs on both procedural and substantive grounds. In relation to the procedural matters, the applicant alleges that the Council failed to work collaboratively to address any concerns and issued a refusal notice without due regard to the previous appeal decision² and accompanying full award of costs. The appeal decision concluded that the scheme would provide adequate living conditions and found no conflict with the Council's policies or guidance in respect of this. On the basis that the schemes are identical, they allege that the Council has acted unreasonably by failing to sufficiently address the findings of appeal decision and the conclusions which were reached.
4. In relation to the substantive grounds, the appellant alleges that the Council failed to objectively assess the application and failed to substantiate their reasons for refusal. The appellant alleges that the Council have failed to assess similar proposals consistently, delaying granting planning permission for a development which accords with local and national policy.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

² APP/Y5420/W/21/3281193

5. In my appeal decision, I acknowledge the Council's concerns regarding the level of occupation of the property. However, in assessing the scheme, it is clear that the appeal is seeking approval for a 6 person HMO, falling into Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The use of the property by more than 6 persons, would constitute a material change of use and could therefore be controlled by the Council. Furthermore, the Council has provided limited evidence and analysis to support their assertion that the property would be occupied contrary to their guidance and licensing requirements.
6. In respect of the Haringey Standards for Houses of Multiple Occupation (2017) (HMO Standards), there is no evidence before me that the Council gave adequate consideration to the wording of the guidance, which allows a kitchen to be located more than one floor from a bedroom, where a dining area is provided. My attention has also been drawn to similar proposals whereby the Council has found these arrangements to be acceptable, which raises doubt as to whether the Council has applied the HMO Standards on a consistent basis, when considering similar cases.
7. In relation to the previous appeal decision, the Council has provided limited substantiated evidence to support their continued position in relation to the alleged conflict with their own guidance and policy. On this basis, I find that the Council has behaved unreasonably, by failing to substantiate their reasons for refusal.
8. The conclusions I have reached on this appeal, largely mirror those of the previous appeal decision, in that the only outstanding matter is the requirement for a Section 106 Agreement. However, the applicant has failed to provide the required planning obligation to address the second reason for refusal. In light of this, I do not find that the Council has acted unreasonably in respect of the second reason for refusal and the requirement for a planning obligation to secure car-free housing.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and 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, 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 the Council of the London Borough of Haringey shall pay to Mrs M Larijani (KIKS Group Ltd) the costs of the appeal proceeding described in the heading of this decision; limited to those costs incurred in contesting the first reason for refusal; such costs to be assessed in the Senior Courts Cost Office if not agreed.
11. The applicant is now invited to submit to London Borough of Haringey, 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.

K Lancaster

INSPECTOR