



Costs Decision

Site visit made on 28 March 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Costs application in relation to Appeal Ref: APP/Z4310/W/22/3308068 27 Spellow Lane, Liverpool L4 4DE

- 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 Denis Bordais for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for change of use from a small HMO (Class C4) to a large HMO (Sui Generis) arising from the use of 1 existing first floor room to accommodate 1 additional en-suite bedroom, and the erection of cycle stores at the rear of the premises.
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Decision

1. The application for a full award of costs is allowed.

The submissions by Mr D Bordais

2. The applicant has submitted that Liverpool City Council ("the Council") changed the description of proposed development without his agreement. In doing so he believes that the Council proceeded to advertise and deal with his planning application on a flawed basis and in an untimely manner. He states that the Council did not take up repeated invitations to confirm the existing use to demonstrate that his description was accurate.
3. The applicant believes that during the course of this appeal the Council has blatantly changed its case in view of a previous Decision¹. He states that the Council provided no evidence to substantiate its reason for refusal. He points out that at one stage the Council had indicated a recommendation for approval but then proceeded to refuse planning permission. Furthermore, he points out that the Council had previously assessed the proposed communal living area as being acceptable.
4. The applicant firmly maintains that in refusing the application on vague, spurious and indefensible grounds, the Council has actively set out to prevent good quality, sustainable development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is argued that the Council's reason for refusal is vague, generalised and makes inaccurate assertions about the proposal's impact, which is unsupported by any objective analysis. He also states that the Council has failed to produce evidence to substantiate the reason for refusal.

¹ Appeal ref: APP/Z4310/W/22/3298406 issued 3 November 2022

5. Furthermore, the applicant considers that the Council has not determined similar cases in a consistent manner. My attention is drawn to particular Decisions² whereby Inspectors have identified the absence of substantive evidence on the Council's part. The applicant believes that the Council's assessment is inconsistent with the outcome of these despite being aware of them which amounts to an irrational, perverse and unreasonable stance.
6. The applicant maintains that this has been an entirely unnecessary appeal, and that he should be reimbursed for the full cost of having to pursue it.

The response by Liverpool City Council

7. No response has been provided by the Council to this application for costs against it.

Reasons

8. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the PPG") advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to have incurred unnecessary or wasted expense in the appeal process.
9. A key aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. Significantly, where an appeal is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
10. Local planning authorities are also at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably defending appeals. This includes preventing or delaying development which should clearly be permitted or failing to produce evidence to substantiate each reason for refusal on appeal. It also extends to vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, or the failure to determine similar cases in a consistent manner.
11. The previous appeal for this site was against the Council's non-determination of that application within the prescribed timeframe. The outcome of that appeal was unknown to the applicant on submission of the appeal to which this cost application relates. Whereas, when responding to that latter appeal against refusal of planning permission, the Council was privy to that outcome. Despite the previous Inspector's findings on character and appearance, the Council continued to pursue its original case. Furthermore, it sought to update its position in light of the outcome of the previous appeal. This introduced 2 new objections relating to the suitability of the fenestration for bedroom 5 and also the proposed communal living space.

² Appeal refs: APP/Z4310/W/21/3266776, APP/Z4310/W/21/3271829 and APP/Z4310/W/21/3288352.

12. The Council has not responded to any of the applicant's allegations against it and no explanation for this has been provided.
13. The Council's evident untimely determination of the planning application subject to this appeal was an unfortunate delay for the applicant. The publication of the previous appeal decision post-dated that decision.
14. I find that there is insufficient evidence to demonstrate that this delay amounts to unreasonable behaviour which led to this appeal being lodged.
15. There is a lack of clarity surrounding the contradiction between the Council's original assessment and its appeal submission in regard to the suitability of bedroom 5 and the proposed communal living accommodation. However, given that this relates to an issue which led to the previous appeal's dismissal, it was appropriate for both parties to have covered them in their evidence for this latest appeal. Although they both did so, it would have been prudent for the Council to have better framed their revised stance in the context of the initial appeal's dismissal to avoid the appellant's criticism.
16. I therefore find that the Council's actions in this regard does not represent unreasonable behaviour.
17. From the evidence before me, it is clear that at the validation stage the Council unilaterally decided to change the description of development and determined it on that basis, despite the applicant's concerns about that change. Crucially, there is no provision for the Council to have done so without the applicant's prior agreement. There is no evidence that the Council ever sought to clarify the lawful use of the site with the applicant for the purposes of validating or determining the application. There is a process which the applicant could have pursued to gain confirmation of the lawful use of the appeal site. However, in this case the Council's action deprived the applicant from exercising his normal right of appeal against non-validation which would have also been an avenue to address that dispute.
18. Significantly, that unilateral act at the validation stage distorted the basis on which the submitted application should have been determined. As this relates to the net change in the intensity of the occupation of the site it directly influenced the assessment and decision made by the Council at the planning application stage.
19. The Officer Report is both internally inconsistent and at odds with the Council's stance on the description of development. The Council's decision was confined to matters concerning the consequences of the effect on the character of the area. Significantly, that decision was taken before the previous appeal outcome was known, and at a point where the Council had not raised objections about the suitability of bedroom 5 and the proposed communal living accommodation as part of its formal decision.
20. In view of this and given the findings of both appeals relating to this site, it is reasonable for me to deduce that a determination on the basis of what the applicant actually sought would have led to a different outcome at the planning application stage. Thus the appeal could have been averted as there were no other reasons for refusal being advanced by the Council at that particular time and in advance of the outcome of the initial appeal.

21. I therefore find that the Council's actions in this regard represents unreasonable behaviour.
22. Despite findings contained in Decisions for other sites relating to similar matters of character and appearance, and the previous appeal for this site, the Council failed to produce evidence to substantiate its reason for refusal. Rather, it continued an approach of submitting vague, generalised and inflated assertions about the proposal's impact, which was unsupported by any objective analysis or evidence.
23. Therefore in view of my Decision I agree that the Council refused the planning application on indefensible grounds. In doing so, the Council prevented good quality, sustainable development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations.
24. I therefore find that the Council's actions in this regard represents unreasonable behaviour.

Conclusion

25. For the reasons given above, I conclude that unreasonable behaviour on the Council's part has occurred and that is directly attributable to the appeal being made. Furthermore, the outcome of the appeal demonstrates that the Council's unreasonable behaviour led to unnecessary expense in respect to the professional support and associated work undertaken to make that appeal. A full award of costs is therefore warranted in this instance.

Costs Order

26. 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 Mr D Bordais the costs of the appeal proceedings described in the heading of this decision, to be limited to those costs incurred in respect of the preparation of this appeal in its totality; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The applicant is now invited to submit to Liverpool City 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.

C Dillon

INSPECTOR