



Costs Decision

Hearing held on 6 June 2023

Site visit made on 6 June 2023

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Costs application in relation to Appeal Ref: APP/M4510/W/23/3318223 The Bruce Building, 101-115 Percy Street, Newcastle upon Tyne NE1 7RP

- 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 Michigan Investments Limited for a partial or full award of costs against Newcastle Upon Tyne City Council.
 - The appeal was against the refusal of planning permission for "Minor Material Amendment (Variation of condition 2 - new exposed fire escape staircase in lieu of an enclosed glazed staircase, amendments to the residential access staircase and lift and a revised roof form over block B, reduction in the number of bedrooms from 60-57) to planning decision 2013/1430/01/DET dated 30.4.14: Change of use of 105/111 Percy Street from (Class A1) retail to (Class A3) restaurant: basement and ground floor of 115 Percy Street from (Class D1) education use to (Class A3) restaurant use: and first floor from (Class D1) education use to (Class B1) office use; conversion of first, second and third floors of 101 to 115 Percy Street to create 60 self-contained student studio apartments, including alteration to roof of 103-111 Percy Street to include rear dormer window extensions and six roof lights to front: erection of 1 x 3 storey and 1 x 4 storey stairwell, extract flue, ventilation grills, single storey entrance foyer and ramp to rear and insertion of oriel window to second floor front elevation" without complying with a condition attached to planning permission Ref 2013/1430/02/RVC, dated 11 February 2015.
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Decision

1. The application for a full award of costs is refused, but a partial award is allowed.

The submissions

2. The applicant's case for a full award of costs was made in writing and presented at the hearing with an alternative case presented verbally for a partial award of costs. The Council's response was made in writing and presented orally at the hearing, and the appellant made further points orally. Details of the oral submissions are set out in the Annexe at the end of this decision.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.

4. There are several strands to the applicant's case. The applicant argues that the Council's reason for refusal was not substantiated, that it failed to address human rights issues and the applicant's 'legal ground' in its Officer Report. Moreover, it is put to me that the Council raised new issues relating to affordable housing, cycle parking and waste storage that were not raised in the Officer Report. The applicant also argues that the Council did not agree a meaningful Statement of Common Ground (CoCG) in a timely manner.

The reason for refusal

5. The Council's Officer Report and decision set out the Council's reason, which related to residential amenity against the current internal space standards. There was no consideration within the Officer Report or decision of the difference between students and non-students or whether the guidance and policies it cited were relevant for the determination of the application. However, it was substantiated, to an extent, in its Statement of Case and then expanded on during the hearing how the Council considered the scheme to amount to a material change of use. Moreover, the Council explained how it considered there to be distinct differences between the occupation by students compared with non-students and I do not consider these points to be so vague and generalised to be unreasonable.
6. Notwithstanding my conclusions in the appeal, whilst the Council's Officer Report and decision did not provide full details of the Council's concerns on this matter, I am not convinced that this was to such a degree that was unreasonable.

The 'legal ground'

7. The Council's Officer Report did not consider the applicant's legal arguments. These were clearly set down in the application supporting statement for the removal of the condition. This was a key aspect of the applicant's case.
8. It is not reasonable for the applicant to need to submit an appeal to establish what the Council's position was on the 'legal ground'. In only providing the Council's reasons within the Statement of Case it introduced fresh evidence at a late stage. In the interests of fairness and natural justice the applicant was permitted to provide a rebuttal statement. However, the time addressing this new information in a rebuttal statement was unnecessary additional expense that would not otherwise have arisen if the applicant was aware of the Council's position when it determined the application. The Grounds of Appeal could then have been focussed on the matters in dispute.

Raising of new issues

9. The Council's Officer Report did not refer to any concerns in relation to a lack of affordable housing, or concerns in relation to cycle storage or refuse provision. Initial queries had been raised by the Council regarding refuse and cycle parking during the application process. The applicant's updated Supporting Statement dated 12 April 2022 sought to address such matters.
10. If the Council had concerns over cycle storage, refuse provision, or the lack of affordable housing provision proposed, these should have been addressed as part of the determination of the application. Raising such matters, after the applicant had prepared and lodged an appeal was introducing fresh and substantial new evidence at a late stage which would have been a surprise to

the applicant. This necessitated additional expense in the form of a rebuttal statement, for preparatory work and in the matters discussed at the Hearing.

11. I accept that the Council did not frame its concerns as additional reasons for refusal. However, if I had found harm, or found that they could not have been dealt with by conditions then this would likely have impacted the outcome of the appeal. This could have been avoided by considering such matters in detail at the application stage.
12. I consider this does amount to unreasonable behaviour on the Council's part that has led to additional unnecessary work by the applicant's agent during the appeal.

Human rights

13. The Council did not specifically address human rights in its Officer Report. However, the matter was not raised in the applicant's supporting statement to the application. Moreover, the Council as a public authority should make decisions in accordance with The Human Rights Act 1998 (HRA98). Section 6(1) of the HRA98 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. In this regard I do not consider the Council to have behaved unreasonably in not specifically addressing it in the Officer Report.
14. The applicant raised the matter as part of the Grounds of Appeal and the Council subsequently provided its response as part of its Statement of Case. Although brief I can not accept that this amounted to unreasonable behaviour resulting in wasted expense in the appeal process.

Case management

15. The applicant contends that the Council did not agree a meaningful SoCG in a timely manner. However, one was submitted in an agreed format within the deadline. It was brief and a more precise statement setting clearly where the differences lie would have been more helpful at the Hearing, for example outlining where the differences were on the 'legal ground'. Nonetheless, I am not convinced that such matters are to a level that would amount to unreasonable behaviour.

Conclusion

16. To conclude unreasonable behaviour has been demonstrated with regard to the 'legal ground' and raising of new issues. This has led to unnecessary and wasted expense at appeal in respect of these matters. Unreasonable behaviour in respect of the reason for refusal, human rights or the case management has not been demonstrated. A partial award of costs is allowed.

Costs Order

17. 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 Newcastle Upon Tyne City Council shall pay to Michigan Investments Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal with regard to the 'legal ground' and raising of new issues; such costs to be assessed in the Senior Courts Costs

Office if not agreed. The applicant is now invited to submit to Newcastle Upon Tyne 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.

Mr R Walker

INSPECTOR

Annexe: Submissions made orally at the Hearing

Applicant – alternative case for a partial award of costs

18. The applicant also makes an application for a partial award of costs, on the basis that the Council has failed to sensibly case manage the appeal. The applicant considers that the Council has not agreed the SoCG in a timely manner, not agreed factual matters. The Council's Statement of Case bears no resemblance to the refusal reason. The Council has introduced fresh evidence at a late stage that has resulted in extra expense for preparation work that would not otherwise have arisen. The Council has pursued a case with vague, generalised, and inaccurate assertions about the proposal. The Council has refused planning permission when this was capable of being dealt with by conditions.

Applicant – Final response

19. Regarding paragraph two, the applicant considers that it is factually incorrect to say that these are the only grounds and the full list is contained in paragraph eleven of the applicant's application for costs. On the fourth paragraph of the Council's costs response, it says that the Council and the applicant have both agreed and signed the SoCG as a true and accurate record. The applicant's agent has signed the SoCG on behalf of the applicant, thus confirming his agreement to his position. At no stage has the applicant said that it is not a true and accurate reflection of the case, so there has been a gross misunderstanding here. The applicant has no idea why the Council considers it appropriate to accuse the applicant of unreasonable behaviour. This is just plainly incorrect.