



Costs Decision

Site visit made on 25 September 2023

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Costs application in relation to Appeal Ref: APP/Q5300/W/23/3320070 45 Swan Way, Enfield EN3 7HZ

- 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 Daniel Cheifetz, Axis Property Holdings Limited for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of planning permission for change of use of existing dwelling-house (Class C3) to a 6 room HMO for the use of 6 individual tenants.
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Decision

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

Reasons

2. 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.
3. The applicant's cost claim is on the grounds that the Council has acted unreasonably. It is claimed that the Council has provided vague generalised statements that are not supported by an objective analysis and its own standards, resulting in the Council not provided sufficient analysis or justification for its reason for refusal.
4. The applicant states that the Council has misinterpreted its own standards for HMOs¹ and the appeal proposal complies with these standards. As detailed within my decision letter, I conclude that proposal would comply with the Council's HMO standards, however this document states that planning permission cannot be guaranteed by compliance with these standards, and that the standards may vary between the Housing and Planning Departments. As such, this guidance is not an adopted planning document, and therefore whilst useful as a guide, is not decisive in the determination of planning decisions.
5. Consequently, compliance with the Council's HMO standards does not mean that planning permission should have been automatically granted and the Council were therefore required to make a planning judgement on the living conditions of future occupiers in accordance with the relevant planning policies.
6. Furthermore, there is no substantive evidence before me to suggest that had the Council interpreted the HMO standards differently, they would have come to a different conclusion as the appeal proposal was refused on its failure to

¹ Enfield Council HMO Standards, for bedsit / letting rooms and shared house accommodation (2021)

accord with planning policies, and the HMO guidance was not referenced in the reason for refusal.

7. The applicant also states that a number of the planning policies referred to in the decision notice are not relevant to the appeal proposal, and that the Council has not provided detailed analysis as to why the appeal proposal is contrary to a number of the policies referenced.
8. I am of the opinion that the Council has not provided detailed analysis of all the policies listed within the reason for refusal, however it has adequately explained the reasons why, in their opinion, the proposal would not comply with other policies within the reason for refusal. Whilst I may have reached a different judgement to the Council on the appeal proposal as a whole, I do not consider the Council has been unreasonable in forming an overall judgement of the proposal in relation to the relevant policies listed within its reason for refusal.
9. As such, the failure of the Council to provide detailed analysis of all the policies listed within the reason for refusal did not alter the Council's overall determination of the proposal, and thus would not have changed the need for the applicant to submit an appeal. Consequently, this issue has not resulted in unnecessary or wasted expense to the applicant.
10. In respect of the reason for refusal's reference to the levels of outlook and natural light for future occupiers (within proposed Bedsit 3), I do not consider that the submitted plans clearly show these doors would be glazed and confirmation of this has only been provided at appeal stage. Thus, I do not consider the Council's inclusion of this in the reason for refusal, on the basis of the information they had at the time of their decision, to amount to unreasonable behaviour.
11. The applicant also asserts that the Council did not provide a Delegated Officer Report, to support the reason for refusal, until after the appeal had been submitted. Nevertheless, the applicant was provided with a copy of the Delegated Officer Report during the appeal process and was able to make their comments and submissions in respect of this document within their Final Comments.
12. As such, I do not consider that the applicant's position has been compromised by not having seen the Delegated Officer Report prior to submission of the appeal. Furthermore, the applicant could have requested a copy of the Delegated Officer Report from the Council prior to submitting their appeal should they have considered it essential to their case at that stage, and I have been provided with no evidence that any such request was made.
13. The applicant has made reference to an appeal decision², and costs award, within the same borough, stating that the Council's decision is inconsistent with this appeal decision. The appeal referenced by the applicant related to an existing HMO that was being increased from six to seven occupants through the creation of an additional bedroom, and therefore in that appeal the Inspector was considering the cumulative impacts of one extra bedroom / person within a HMO that was already established.

² APP/Q5300/D/20/3261391

14. I consider that appeal to be materially different to the current appeal proposal which seeks permission for a change of use from a dwellinghouse to a six-person HMO. Thus, the two cases are not directly comparable and the Council was entitled to determine this appeal on its own planning merits.

Conclusion

15. Given all of the above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

R Major

INSPECTOR