



Costs Decision

Site visit made on 8 August 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Costs application in relation to Appeal Ref: APP/B0230/W/22/3304652 149 Wellington Street, Luton, LU1 5AH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Danny Taylor for a full award of costs against Luton Borough Council.
 - The appeal was against the refusal of planning permission for the erection of single storey rear and basement extension to create one studio flat in basement and two bed flat at ground, first and second floor.
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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 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 PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. Consequently, it is necessary to consider whether the Council has provided relevant evidence to show that there were reasonable grounds for their view.
4. Regarding housing mix, the Council's decision notice refers to the loss of an existing two bedroom dwellinghouse, which has not been substantiated, given that the proposed development would not prevent the continued use of the dwelling above the basement. There is also no evidence before me that the applicant intended to implement the extant permission for the conversion of the appeal site into a four bedroom dwellinghouse and as such it has limited weight. Accordingly, it has not been adequately demonstrated that this was a reasonable ground for refusal.
5. Regarding living conditions for occupiers, the Council did refer to the presence of the existing small window within the front elevation. Also, as of the date of the site visit, the basement was not in use as a bedroom. The Council also refer to the proposed windows on the rear elevation, albeit they did not explicitly refer to the presence of full height windows. Nonetheless, the Council did consider the dimensions of each housing unit and did reach the accurate conclusion that it would lead to an unacceptable living environment with a

- restricted outlook. This was a reasonable conclusion based on the evidence before them.
6. Regarding living conditions for neighbouring occupiers, there is no evidence before me that the proposed development would materially harm the living conditions for the occupiers of 147 Wellington Street or any other adjoining property. However, I note that no evidence was submitted by the applicant regarding the existing flat conversions in the vicinity. Equally, although the Council did not take into account the potential fallback position of the appeal site being converted into a House in Multiple Occupation (HMO), I note that one of the conditions in the extant permission (Ref 21/01343/FULHH) requires that the appeal site be used as a single family dwelling house. This is an integral part of the extant permission, so it is irrelevant whether or not it has yet been implemented.
 7. Given the limited dimensions of the appeal site, there is no evidence before me that there would be a reasonable prospect that the existing dwelling could be converted into an HMO without the extant permission. Nonetheless, given the location and limited additional domestic activity that would occur as a result of the proposed development, it has not been adequately demonstrated that this was a reasonable ground for refusal.
 8. Accordingly, the applicant has incurred unnecessary or wasted expense in the appeal process, in relation to the costs associated with housing mix and the living conditions of neighbouring occupiers, but not those relating to future occupiers.
 9. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that 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 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 Luton Borough Council shall pay to Mr Danny Taylor, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in appealing the reason for refusals in relation for housing mix and living conditions for neighbours; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Luton Borough 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.

S Lo

INSPECTOR