



Costs Decision

Site visit made on 22 November 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Costs application in relation to Appeal Ref: APP/B0230/W/23/3315653 83 Russell Rise, Luton LU1 5ET

- 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 Charlie Simpson for a full award of costs against Luton Borough Council.
 - The appeal was against the refusal of planning permission for extensions and alterations to existing dwelling and change of use to 8-bedroom HMO.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal. This application is made on substantive grounds for a full award of costs.
3. The applicant's cost claim states that the Council acted unreasonably in that they failed to consider the fallback position, incorrectly assessed the applicant's permitted development rights, and did not adequately justify its reasons for refusal by referencing relevant policy guidance.
4. Although I have attributed more weight to the fallback position, I have still determined that the existence of the fallback position does not alter the overall outcome of the appeal. The Council referenced the fallback within their delegated report and determined that there wasn't a more than theoretical prospect of the fallback being implemented, which in itself cannot be considered unreasonable.
5. Given the above, the delegated report by the Council provides an analysis of the proposal giving sufficient reasoning for their decision. Whilst specific guidance regarding communal living space within Houses of Multiple Occupation (HMOs) has not been referenced, the Council has highlighted relevant local and national policies with which there is conflict.
6. The applicant would be able to implement the extensions highlighted within the Prior Approval Application¹ and the Lawful Development Certificate² while the

¹ Application Reference: 22/00525/PARES

² Application Reference: 22/00434/LAWP

property remains in C3 or C4 use under permitted development. However, the proposed development would fall under Sui Generis use and therefore would not benefit from the same permitted development rights currently afforded to the property. As such the proposed extensions would require explicit planning permission. While the Council raised concerns within their delegated report regarding the effect of the extensions on the character and appearance, these were not brought forward as a reason for refusal and had no bearing on the outcome of the appeal.

7. Given the above, the Council was not unreasonable in its decision. Following the consideration of the appeal on its merits I have concurred with the Council. The applicant's costs associated with the appeal were therefore a necessary part of the appeal.
8. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. Therefore, the application for an award of costs is refused.

K Allen

INSPECTOR