



Costs Decision

Site visit made on 30 October 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Costs application in relation to Appeal Ref: APP/M4320/W/23/3326424 101 South Road, Waterloo, Liverpool L22 0LS

- 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 Harold Jones Ltd for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of the first and second floors only from a Bank (E) to an 8-bedroomed House in Multiple Occupation (HMO) (Sui Generis), a single storey extension to the rear and external alterations including the reinstatement of the existing entrance door onto Neville Road.
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Decision

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

Procedural Matter

2. I was appointed to determine two appeals relating to the same property, and produced a single decision letter covering them both. This claim for an award of costs relates to the appeal referred to as Appeal B in my main decision. The other appeal (PINS Ref: APP/M4320/W/23/3321797) is referred to as Appeal A here and in my main decision.

Reasons

3. 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 incur unnecessary or wasted expense in the appeal process.
4. Paragraph 049 of the PPG gives examples of behaviour which may give rise to a substantive award of costs against a local planning authority, including "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations", and "not determining similar cases in a consistent manner"¹. The applicant considers that the Council's behaviour in respect of the planning application falls within these examples in three principal ways: that it adopted "a perverse and unreasonably intractable position" to the development; that it misapplied, misinterpreted and misquoted both its own policy and an earlier appeal decision relating to the same property ("the 2023 appeal decision")²; and that it did not handle broadly comparable cases in a similar manner.

¹ Reference ID: 16-049-20140306

² PINS Ref: APP/M4320/W/22/3307322

5. The first of these points can be dealt with relatively quickly. The appeal scheme did not propose any provision of outdoor amenity space for the occupiers of the HMO. For the reasons set out in my main decision (which it is not necessary to rehearse here) I found that appellant had not demonstrated “exceptional circumstances” in the terms set out in the Council’s 2023 *Conversions to Flats and Houses in Multiple Occupation* Supplementary Planning Document (“the 2023 SPD”), that the proposed development therefore did not comply with the development plan, and dismissed the appeal. Having agreed with the decision not to grant planning permission, I therefore cannot find it was indicative of the Council being perverse or intractable, or otherwise unreasonable.
6. Turning to the second point, I consider that there were some errors in the Council’s assessment of the proposed development. Its officer report said that “the proposal to use the existing rear building as a kitchen/diner is not acceptable as the residents will have to leave the main building to access it”. This was not borne out by my reading of the submitted drawings, which showed the room referred to in an existing extension at the rear of the building, which occupiers of the HMO would be able to reach without having to leave the building.
7. The officer report also observed that “when basic furniture, beds etc are introduced, the lack of communal rooms or a dining room will mean the residents will have to eat/live and sleep within a room of the minimum standards” but, as the applicant has rightly pointed out, communal rooms are not required by the Council’s development plan policy or the related guidance. The officer report did not go on to clearly explain the implications of this observation, and presumably the Council considers its minimum standards to be acceptable.
8. To my mind, neither of those two statements highlighted by the applicant entirely makes sense when considered in the light of the full facts of the case. I can therefore understand the applicant’s irritation or confusion when faced with them. Unlike in the linked Appeal A, however, they did not directly inform the reason for which planning permission was refused (nor were they relied on by the Council at appeal stage). They are not therefore demonstrative of the Council having misapplied or misinterpreted its own policy.
9. There were significant differences between the proposed development in the 2023 appeal decision and the proposed development in this case. These related both to the intensity and impacts of the scheme (five bedrooms then versus eight, and an amenity space shortfall of 40m² then versus 80m²), and the policy position (the 2023 appeal decision was made in the light of guidance in an earlier 2018 supplementary planning document, while the Council’s determination of the planning application and my appeal decision were made with reference to the very different provisions of the 2023 SPD).
10. Consistency in decision making is important, and previous appeal decisions are often material considerations carrying considerable weight. However, as I explained at some length in my main decision, the differences I have just set out justified reaching a different conclusion in this appeal. The Council’s response to the 2023 appeal decision cannot therefore in my view be interpreted as reflecting an “apparent desire to set aside” my predecessor’s judgment. On the second point as a whole, I therefore do not find that the Council acted unreasonably.

11. The third point also relates to consistency. The appellant's planning application material (and appeal submissions) referred to three other allowed appeals for HMOs or flats, and a further case in which the Council had granted planning permission for flats itself. I have addressed all these other cases in my main decision. While there were on the face of it some similarities between those cases and the proposed development in this appeal (either in the nature of the scheme, or the principal controversial issues which were considered), there were also significant differences. Of particular importance again is that the Council was determining this planning application with reference to the 2023 SPD, while the other cases had been determined in the light of the withdrawn 2018 guidance. None of those other cases therefore set a precedent which bound the Council to granting planning permission, and they are not demonstrative of the Council having acted inconsistently or otherwise unreasonably in this case.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. and an award of costs is not warranted.

M Cryan

Inspector