



Costs Decision

Site visit made on 3 January 2024

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2024

Costs application in relation to Appeal Ref: APP/Z4310/W/23/3323312 51 Grosvenor Road, Picton, Liverpool L15 0EY

- 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 Thomas Smithson for a full award of costs against Liverpool City Council.
- The appeal was against the refusal of planning permission for the change of use from a single C3 Use Class dwelling house to form two C3 Use Class apartments.

Decision

1. The application for an award of costs is allowed in the terms set out below.

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 second reason for refusal references Policy H12 of the Liverpool Local Plan 2013-2033 (Local Plan), which the applicant considers the Council has erred in its application when determining the appeal development. Although the applicant did not provide evidence at the application stage to demonstrate that step-free access at the appeal property was not viable, the applicant's position would have been clear to the Local Planning Authority (LPA) once the appeal had been submitted, which included details on why it was not practical to provide step-free access. The applicant also made a comparative reference to an approval¹ by the Council of another older property where the LPA found that step-free access was not viable and there was no requirement for adaptable and accessible housing.
4. Irrespective of the concerns the Council had in relation to the principle of development and not seeking further details on this matter during the consideration of the application, the Council persisted in its objection to the scheme at the appeal stage. They have not provided any substantive response other than stating that the relevant Local Plan Policy H12 allows for site specific constraints to be taken into account and that further detail from the inclusive design specialist were not sought. The PPG² advises that not reviewing their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management is an example of

¹ LPA Ref: 23F/0256

² Paragraph: 049 Reference ID: 16-049-20140306

unreasonable behaviour. The Council has failed to substantiate this reason for refusal, and I consider they acted unreasonably in this regard.

5. The applicant has also set out that the Council has not provided a reasonable explanation of their decision in relation to the loss of a family home. The development would provide a 2-bedroom 3-person apartment which the Council has accepted would be suitable for occupation by a smaller household. Overall, whilst there would not be a net loss in accommodation suitable for family living, and I consider, for the reasons set out in the accompanying appeal decision, that the proposed 2-bedroom apartment would comprise of a family home, the proposal would as a matter of fact result in the loss of a 4-bedroom property, or given the small size of one of the bedrooms, a 3-bedroom dwelling. The Council has set out why it considered the proposal would result in the loss of a dwelling suitable in size, design, layout and location for continued use as a family dwelling. Whilst I do not share the Council's overall assessment of the appeal proposal on this issue, I consider that they have provided a reasonable justification to substantiate its position.
6. The Council has referred to various evidence, including the Strategic Housing Marketing Assessment (SHMA) but has not provided copies of the referenced documents. It would no doubt have been helpful for the Council to make specific references to the documents that they referred to, or provided the relevant extracts but I do not consider the Council has acted unreasonably as it is a normal part of the appeal process to undertake research following the review of the other main party's case in the appeal.
7. In relation to the Council's use of the term larger family home, which is distinct from family dwelling or family home, I am not persuaded that they would have reached a different conclusion on this issue in light of their reasoning. I note that an incorrect reference number was used by the Council when referring to an appeal decision, but it has not been demonstrated how this matter influenced the Council's decision. Various references were made by the Council to Houses in Multiple Occupation (HMO), but these mainly related to the appeal site being within a HMO designated neighbourhood. Based on the Council's case as a whole, as set out in their Delegated Report and Appeal Statement, I find they correctly assessed the application subject of this appeal as a proposal for two apartments.
8. Both the PPG and the National Planning Policy Framework encourage local planning authorities to take a positive approach and work proactively with applicants. The applicant states that there was a lack of engagement from the Council and issues could have been resolved had they proactively engaged. In relation to tree planting, although the tree officer was not consulted, the requirements of Local Plan Policy GI 8 are clear in this regard. Whilst the applicant was not afforded an opportunity to address this matter, it was identified as part of the refusal and no planning obligation has been provided as part of this appeal submission. As such, I am not persuaded the applicant has incurred any wasted or unnecessary expense in this regard.
9. Nevertheless, although an appeal would have been necessary as a number of the matters related to a difference in planning judgement, the applicant has been put to wasted and unnecessary expense in relation to the second reason for refusal.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the second reason for refusal and a partial award of costs is therefore warranted.

Costs Order

11. 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 Liverpool City Council shall pay to Mr Thomas Smithson, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Liverpool 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.

F Rafiq

INSPECTOR