



Costs Decision

Site visit made on 7 March 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 9th April 2024

Costs application in relation to Appeal Ref: APP/Z4310/W/23/3329524 89 Lawrence Road, Liverpool L15 0EF

- 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 Sandeep Krishan 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 existing 7 bed sui generis HMO to an 8 bed suis generis HMO with proposed internal and external alterations.

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 applicant has indicated that the Council has acted unreasonably which has led to unnecessary or wasted expense in relation to procedural and substantive matters.
4. Following the refusal of the planning application¹ subject to this appeal, the Council has granted planning permission² for a very similar scheme, in proximity to the appeal site. That permission granted the change of use from a 7-bed to an 8-bed HMO for a mid-terrace property. In that instance the Council reasoned that the noise and disturbance generated by increased occupation levels, from 7 to 8 persons, would not be unacceptable. This is inconsistent with their assessment of the appeal proposal. Furthermore, given the appeal property is at the end of a terrace, it could be determined that it has less of a close physical relationship with neighbouring properties, than the other property which was granted permission.
5. In this regard, I find that the Council has acted unreasonably as it has not determined cases in a consistent manner. Such a find accords with the examples of unreasonable behaviour by a local planning authority that may give rise to a substantive award, as set out in the PPG³.
6. The installation of communal bins is a material change in circumstance, as it negates the need to provide refuse storage within the appeal site. There is no

¹ Planning application Ref. 23F/0185

² Planning permission Ref. 23F/0186

³ Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014

evidence before me that when the Council refused the planning application, the communal bins were in situ. It is plausible that the first time the Council's planning team were aware that the communal bins were in situ was on 3 January 2024, following the receipt of the evidence provided by the applicant. The Council were invited to confirm they would not defend the fourth reason for refusal. Initially the Council did not respond to the request; however, in response to the cost application the Council contended that the communal bins are not a material planning consideration as they were not in situ. Regardless, of whether they were in situ or not when the Council submitted their response, the commitment to install communal bins would be a material consideration, as it would negate the need for onsite refuse storage, now or at some point in the future.

7. The applicant has sought to draw similarities between the appeal proposal's refuse storage and the aforementioned planning permission for the change of use at a nearby property. There are no plans before me for the nearby property, showing where the refuse storage is, or would be sited. As such, I cannot conclude that the Council has not determined cases in a consistent manner, in relation to refuse storage.
8. Overall, I find that the Council has acted unreasonably following the correspondence on 3 January 2024. The Council has not considered the material change in circumstances, and it is likely they would not have sought to defend the fourth reason for refusal if they had.
9. The Council changed the description of the development without an agreement with the applicant. The description of development stated by the Council is accurate for the proposed development; however, it does not include the existing use of the building. Nonetheless, throughout the delegated officer's report it indicates that the existing use of the appeal property is a 7-bed HMO. Also, the consultation response which questions the existing use of the building has been highlighted and addressed within the report. I am therefore satisfied that the change in the description of development has not led to the Council assessing the proposal on a flawed basis.
10. The explanatory text of Policy H10 of the Liverpool Local Plan 2013-2033, Adopted January 2022 (LLP) makes it clear that the amount of internal communal space should proportionally increase with the size of the HMO. It is clear that the minimum standard of 12m² is for a 4-bed HMO. Whilst there is no explicit standard for the size of external space, LLP Policy H10 is clear that proposals should ensure access to yards and/or gardens. It is a matter of planning judgement whether the size of the external space would be appropriate for the level of occupancy. Whilst I disagree with the Council's assessment on the external space, I am satisfied that the second reason for refusal has planning merit.
11. Following the refusal of the planning application, the Council has been made aware that the proposed window within proposed Bedroom 6 was permitted under a previous permission and the existing window within proposed Bedroom 8 does not benefit from planning permission. The new evidence is a material consideration, and the Council amended their case accordingly. I am therefore satisfied that the Council has not acted unreasonably by introducing new grounds for refusal, given the introduction of new evidence.

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of producing evidence to rebut the first reason for refusal and, following 3 January 2024, having to produce further evidence to rebut the fourth reason for refusal, a partial award of costs is therefore warranted.

Costs Order

13. 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 Sandeep Krishan, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing evidence to rebut the first reason for refusal and, following 3 January 2024, having to produce further evidence to rebut the fourth reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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.

J Hobbs

INSPECTOR