



Costs Decision

Site visit made on 15 May 2024

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs application in relation to Appeal Ref: APP/G4620/W/23/3334290 7 Temple Meadows Road, Sandwell, West Bromwich, B71 4DE

- 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 Jas Birring of Bright Life Living for a full award of costs against Sandwell Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from sui generis self-contained flats to Use Class C2 - children's residential care home.
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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. In this case, the applicant's cost application essentially relies on the fact that the Council's reason for refusal was founded on inaccurate assertions about the impact of the proposed development which were not supported by objective analysis. Therefore, in refusing planning permission, the Council delayed development which should have been permitted.
3. There is little meaningful or structured discussion within the delegated report regarding the site-specific impacts of the proposal beyond vague, generalised assertions. Having regard to the Public Health response on which I am led to believe the reason for refusal is largely based, I find there to be a lack of substantive evidence to support the claim that the emotional or behavioural difficulties of the residents and the associated care requirements would result in a greater level of noise disturbance than that which would be expected of a family with 3 children. Furthermore, despite reference to increased comings and goings within the refusal reason, there is a clear lack of analysis within the Council's reasoning in relation to how the traffic movements would compare to the use of the property as a family dwelling, or 2 self-contained flats as recently permitted.
4. In the absence of any objective analysis informed by robust evidence, it cannot be reasonably argued that the traffic movements and noise resulting from the use of the property as a care home would be materially different to that of a domestic family residence. Whilst the Council seeks to argue that proactive attempts were made to support the scheme through the use of a temporary condition, this would in my view, fail the test of necessity, particularly given

that the officer's reasoning failed to demonstrate that such a condition would be necessary to make the development acceptable.

5. I do not dispute that matters of noise and disturbance are material planning considerations. However, in this case, no credible evidence has been provided to demonstrate that the proposal would be harmful by reasons of increased traffic movements and noise disturbance. Indeed, in my accompanying decision I explain why I find no basis to the objection on these grounds. Under these circumstances, I am unable to conclude that the reason for refusal was informed by robust, objective analysis or indeed stands up to scrutiny on the planning merits of the case. Thus, I find that there was no reasonable basis for the Council to justify a refusal of the planning application.
6. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated. A full award of costs, to cover the expense incurred by the applicant in contesting the Council's reason for refusal, is therefore justified.

Costs Order

7. 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 Sandwell Metropolitan Borough Council shall pay to Mr Jas Birring of Bright Life Living, the costs of the appeal proceedings described in the heading of this decision. Such costs to be assessed in the Senior Courts Office if not agreed.
8. The applicant is now invited to submit to Sandwell Metropolitan 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.

H Wilkinson

INSPECTOR