



Costs Decision

Site visit made on 27 February 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Costs application in relation to Appeal Ref: APP/P4605/W/23/3330177 191 Willow Avenue, Birmingham B17 8HJ

- 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 S Pattni of GeminiPI Limited for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of planning permission for extension of existing 5 bed HMO to 6 bed HMO, erection of a single storey rear extension and rear dormer at roof level, internal alterations to make all rooms ensuite.
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Decision

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

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 PPG advises that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceedings, behaviour, and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. Whilst the decision was made contrary to the officer's recommendation at planning committee, this in and of itself is not unreasonable behaviour, so long as the reason for refusal was clearly set out in the decision notice. The committee members carried out an objective analysis of these elements of the proposal and substantiated its refusal reason with reference to relevant considerations in relation to the effect of the proposed development on the living conditions of the occupiers of the neighbouring dwellings. Whilst the Statement of Case did not specifically refer to policies within the development plan, the Decision Notice did so and the two should be read in conjunction.
5. The evidence submitted for an appeal should be relevant and appropriate for the scale of the development proposed. Given the limited scale of the development proposed as well as the subject of the reason for refusal the evidence provided by the Council was adequate to support its case, in this instance. I am satisfied that the Council had a rational and reasonable basis for its stance. Consequently, the Council substantiated its reason for refusal and grasped the intellectual nettle of disagreement discussed in *R (Blacker) v Chelmsford City Council [2023] EWCA Civ 25*.

6. Within its Statement of Case reference is made to the application for the 7 bedroom House in Multiple Occupation (HMO) and the Council acknowledged that the building could be occupied by 6 people. It also identified potential matters that could affect the implementation of either fallback scheme. Whether or not the scheme for 7 occupiers had been implemented is a matter in dispute between the parties and the approach taken by the Council was reasonable given the evidence before it. As such, the Council took into consideration these fallback positions as per *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314.
7. For the reasons set out in my Appeal Decision I disagreed with the Council on the planning merits of the scheme. Whilst I disagreed with the Council's assessment of the proposed development, the weight attributed to the material considerations of a case is a matter of planning judgement by the decision maker which was the planning committee in this instance. Whilst the applicant has concerns about the handling of the application, vague, generalised or inaccurate assertions about the proposal's impact was not made in the reason for refusal.
8. The applicant was disappointed with the Council's handling of the application, procedures and subsequent outcome. However, its submissions were, on balance, sufficient to substantiate its case and its behaviour and actions at the time of the planning application and this appeal have not resulted in unreasonable behaviour or unnecessary or wasted expense at appeal stage.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

G Sibley

INSPECTOR