



Costs Decision

Site visit made on 15 July 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Costs application in relation to Appeal Ref: APP/N5660/W/24/3337243 41 Valley Road, Lambeth, London SW16 2XL

- 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 C Harvey for a full award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against the planning permission for change of use from a small house in multiple occupation (Use Class C4) to a larger house in multiple occupation (Sui generis).
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Decision

1. The application for an 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 applicant's claims, in brief, are firstly that the Council's omission of a reason for refusal relating to internal floor space provision demonstrated it had assessed an earlier application (Council Ref 23/00198/FUL) incorrectly as there were no changes made to the internal layout between the two schemes. Secondly, the Council ignored the applicant's evidence relating to the lawfulness of the change of use to a six-person HMO and failed to cooperate by not seeking further evidence from the applicant. Thirdly, the Council's request for a Section 106 agreement was unreasonable given the impact on localised parking stress would be negligible. The applicant also refers to loss of income from the Council's decision to refuse the application and subsequent delays in using the building as intended.
4. The Council states that it explained its reasoning with respect to internal floor space provision in its officer report, but adds that the alleged inconsistency relates to a separate planning application and not this appeal. In the second matter, the Council states that the applicant did not seek pre-application advice and it determined the application as made within the statutory time limit. The Council further argues that its requirement for a Section 106 agreement to secure various obligations was necessary to mitigate transport impacts of the development and promote sustainable modes of travel, and so was reasonable. It adds that the applicant's claim does not clearly set out what costs have been suffered or how the Council's behaviour has resulted in these additional costs being incurred.

5. There was an evident difference between the two applications in that the earlier one was assessed on the basis of two rooms being double occupancy and those falling short of the required floor space, whereas under the current proposal, these rooms were clarified to be single occupancy and therefore in accordance with minimum space standards. As such, the Council has explained the difference in its conclusions on this matter, which are reasonable in the circumstances.
6. On the second matter, it is for the applicant to provide all relevant information as part of the application documents. I have limited evidence as to the interaction between the parties during the application process, and therefore it is not clear whether the Council wilfully ignored attempts by the applicant to engage with it and to facilitate the applications progress. Ultimately, the Council is required to make a decision on the application as made, and it did so, setting out its reasoning in an officer report and reasons for refusal which referred to relevant development plan documents. The merits of its reasons for refusal aside, I do not find unreasonable behaviour in the Council's approach.
7. Regarding the Section 106 agreement, the Council's position is understandable given the approach set out under a number of development plan policies. In the circumstances of this case, I determined that permit-free parking was not necessary to make the development acceptable in planning terms, and that the harm arising from a failure to provide car club and cycle hire membership was limited, resulting in modest conflict with the relevant development plan policies. Doubt as to whether the required obligations met the tests for planning obligations was a further consideration. Whilst I my findings differ from the Council, it provided evidence to substantiate its position, and given that it required planning judgement on the facts of the case, which in turn fed into the further judgement required in the overall planning balance, I do not regard the Council's approach as unreasonable.
8. Overall, the planning judgement required to balance the facts of the case demonstrates that the Council did not refuse development that should clearly have been permitted. Moreover, given that an appeal was necessary to address the matters at issue, it follows that the applicant has not been put to wasted expense in making the appeal.

Conclusion

9. For these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated, an award of costs is not justified. No award is therefore made.

K Savage

INSPECTOR