



Costs Decision

Site visit made on 3 September 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2024

Costs application in relation to Appeal Ref: APP/Z4310/W/24/3344063 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 change of use from existing 7 bed Sui Generis HMO to an 8 bed Sui 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 substantive matters.
4. The Practice Guidance gives examples of the types of behaviour which may lead to a substantive award of costs against a local planning authority. One example is to persist in objecting to a scheme which the Secretary of State or in Inspector has indicated would be acceptable.¹
5. An appeal for a substantially similar scheme at the appeal property was dismissed in April 2024². The Council had refused the application for 4 reasons, namely the effect of noise and disturbance on neighbouring occupiers; insufficient communal lounge floorspace and outdoor amenity space; inadequate outlook; and the effect of bin storage on the character of the area. The Council withdrew their reason for refusal regarding outlook to bedroom 6. The Inspector found the scheme to be acceptable on all issues apart from one – insufficient communal lounge floorspace.
6. Prior to the earlier appeal being determined, the applicant submitted a substantially similar scheme³, the subject of this appeal, which was refused on 14 December 2023, for three reasons. The reasons were the effect of noise and disturbance on neighbouring occupiers; insufficient communal lounge floorspace and outdoor amenity space; and inadequate outlook.

¹ Paragraph: 049 Reference ID: 16-049-20140306 – Revision date: 06 03 2014

² APP/Z4310/W/23/3329524

³ 23F/1971

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7. Once the earlier appeal had been determined in April 2024, in May 2024 the applicant submitted this appeal in relation to planning application 23F/1971, and in light of the Inspector's decision, requested that the Council withdraw its reasons for refusal which related to noise and disturbance, external amenity space and outlook.
 8. With regard to the first reason for refusal, the Inspector of the earlier appeal found that one additional occupant to the HMO would not cause harm to the living conditions of neighbouring occupiers with regard to noise and disturbance. With regard to this appeal, the Council chose not to withdraw its reason for refusal, but did not provide any substantive evidence to support its continued position following the Inspector's decision.
 9. With regard to external amenity space, part of the second reason for refusal, the Inspector of the earlier appeal had determined that the external amenity space was adequate for the occupiers of the HMO. In relation to this appeal, the Council did not withdraw this reason for refusal, and argued that the provision of bins within the rear yard would limit the amount of amenity space available. I do not consider that there have been any material changes to the likely bin provision or collection system which were considered and found to be appropriate in the earlier appeal, and note that the comments from the recycling team regarding the provision of bins was identical for both applications.
 10. In relation to the previous appeal decision the Council has provided limited substantiated evidence to support its continued position on the issues of noise and disturbance and outdoor amenity space, and must have been aware that these reasons for refusal had very little prospect of being successfully defended at appeal. On this basis, I find that the Council has behaved unreasonably, by failing to substantiate its reasons for refusal and persisting to object to elements of a scheme that a previous Inspector had deemed to be acceptable.
 11. The main difference between the two schemes related to the floorspace of the communal lounge and kitchen. The revised application reconfigured the layout of the communal space, and was able to indicate that a lounge/kitchen space could be provided which met the requirements of the Liverpool Local Plan and the Council's Houses in Multiple Occupation Standards and Management Document. Whilst I agreed with the applicant that the proposal would now be acceptable, I consider that the Council did substantiate the reasons that it deemed the scheme not to meet the standards required. The Council's reasoning regarding the suitability of the floorspace were clearly set out and reasoned within the Officer's report.
 12. The third reason for refusal, relating to inadequate outlook, was withdrawn. The applicant has argued that he has incurred time and costs in appealing grounds which included inadequate outlook. However, at the time of the planning decision which led to this appeal, the earlier appeal had not been determined. The Council were therefore justified in refusing the application on the grounds of outlook and set out their reasoning in the Officer's Report.
 13. Following the earlier appeal decision, the Council withdrew the reason for refusal in its Statement of Case. The local planning authority's withdrawal of its reason for refusal was not therefore, based on an Inspector's decision that was available when it determined the application. Following receipt of the appeal,

the reason was withdrawn at the earliest opportunity, so the appellant was not put to any additional expense pursuing the matter at Final Comments stage.

14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of rebutting the first reason for refusal, and part of the second reason for refusal, insofar as it relates to external amenity space. A partial award of costs is therefore warranted.

Costs Order

15. 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 part of the second reason for refusal relating to outdoor amenity space; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. 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.

L C Hughes

INSPECTOR