



Costs Decision

Site visit made on 23 August 2024

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Costs application in relation to Appeal Ref: APP/A5270/W/24/3339963 34 Kenton Avenue, Southall UB1 3QG

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Chetna Thakrar for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the refusal of planning permission for the retention of existing building as large house in multiple occupation for maximum of 8-beds 10 people.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) 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 Council concluded that the HMO would not provide satisfactory living conditions for residents partly due to a lack of adequate cooking facilities and the absence of an internal communal area. That assessment, however, was based on each bedroom being large enough for two people. As a result, the Council's evaluation was skewed towards a higher occupancy level than was explicitly sought by the applicant or stated in the extant HMO licence.
4. The Officer's report did not offer an alternative assessment to reflect the development sought nor explain exactly why a condition limiting the maximum occupancy level of the HMO to 10 people would not effectively overcome this objection. By choosing not to submit a Statement of Case and therefore rely solely on the Officer's report, the Council has also not taken the opportunity to explain its position at the appeal stage or to substantiate its refusal reason. To my mind, this approach amounts to unreasonable behaviour.
5. The Council also raised concern that Bedroom No 2 would not be provided with a window for natural light and ventilation. As the plans show that Bedroom No 2 is served by an external door, that statement is not incorrect. However, it assumes that the external door does not include a window and that the room would be poorly lit and ventilated as a result.
6. Assessing matters such as the effect of a development on the living conditions of occupiers can be partly subjective. It is inevitable that opinion will vary. However, where the outcome of a planning decision hinges on an assessment

of such an issue, it is reasonable to expect realistic and specific evidence to be put forward regarding the consequences of the scheme.

7. In this case, a short request to the applicant to clarify the details of the opening to Bedroom No 2 or even an inspection of the property ahead of the decision would have clarified matters one way or the other. As the appellant's evidence includes photographs of the external door to Bedroom No 2, the Council has also had the opportunity to respond on this matter at the appeal stage. It has not done so. The Guidance notes that generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in an award of costs.
8. The applicant is also critical of the Council in not determining like cases in a like manner. However, each of the decisions cited differ to the development sought and so the Council was not necessarily bound by previous decisions. As the applicant acknowledges, it is a key planning principle that each case should be assessed on its own merits.
9. Nevertheless, I have little doubt that the Council has failed to clearly show why the development should not proceed and that it has not substantiated the reason for refusal. The Council's evidence does not provide a respectable basis for its stance. It has prevented development that should clearly have been permitted. The appellant has had to recourse to appeal and incur the associated costs of doing so, which could and should have been avoided.
10. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 the Council of the London Borough of Ealing shall pay to Mrs Chetna Thakrar, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gary Deane

INSPECTOR