



Costs Decision

Site visit made on 14 August 2024

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Costs application in relation to Appeal Ref: APP/C1055/W/24/3338528 26 Highfield Road, Derby DE22 1GZ

- 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 Nickos Zannetou for a full award of costs against Derby City Council.
 - The appeal was against the refusal of planning permission for the change of use from a six-bedroom (six occupant) house in multiple occupation (Use Class C4) to an eight bedroom (eight occupant) house in multiple occupation (Sui Generis).
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Decision

1. The application for an award of costs is allowed in part 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 submits that the Council has acted unreasonably in that, by refusing the appeal proposal, it has gone against the advice of professional officers without good reason and has failed to substantiate its objection to the proposal on the grounds of harm to the living conditions of neighbouring occupiers, their description and understanding on the character of the area with regard to the number of Houses of Multiple Occupation (HMO) and the effect of the proposal on highway safety. It is their contention that the proposal complied with both local and national planning policy and all other material considerations and should therefore have been permitted without the necessity of an appeal which has caused the applicant unnecessary expense.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
5. With regard to the reasoning given by the Council on their assessment of the proposal on the living conditions on neighbouring occupiers and their assessment of the character of the area, I find that these matters are intertwined due to the reason for refusal given. This is an overall assessment of the area with regard to the living conditions of neighbouring occupiers.

Although the Council went against officer recommendation, I find that in an appeal relating HMOs, additional occupants may have an unacceptable effect upon the living conditions of neighbouring occupiers in certain situations. The assessment of this issue is subjective and in its capacity as a decision maker, the Planning Committee made a decision which is a matter of planning judgement. Whilst I do not agree with the Council on the effect of the proposal in this instance, I do not find that it has acted unreasonably in relation to issues 1 and 2 raised by the applicant in their Application for Costs.

6. However, in refusing the application on highways grounds, no substantive evidence was put forward by the Council to support this reason for refusal. There was no objection from highways officers in this regard, and the decision was a direct contradiction to the recommendation of both the planning officer and highways officer. Whilst in my decision I have noted that the provision of an additional 2 occupiers beyond the existing use of the building would increase parking demand, there is no clear and justifiable reasoning to suggest that this would be to the detriment of highway safety or detrimentally increase traffic generation. From the evidence, it appears that members did make unsubstantiated assertions over the potential effects of the proposal with no objective analysis or evidence to support their claims.
7. This therefore constitutes unreasonable behaviour contrary to the guidance in the PPG. As a direct result, the applicant has been faced with the unnecessary expense of further addressing this matter at appeal.
8. Consequently, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified, limited to the highways matters related to the appeal in responding to the reason for refusal on these grounds.

Costs Order

9. 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 Derby City Council shall pay to Mr Nickos Zannetou, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Derby 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Smith

INSPECTOR