



Costs Decision

Site visit made on 5 August 2024

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Costs application in relation to Appeal Ref: APP/M5450/W/24/3337694 93 Headstone Road, Harrow, HA1 1PG

- 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 93 HA1 LIMITED for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for is change of use from C4 Small House in Multiple Occupation for up to 6 people to Large 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. Examples of behaviour that may give rise to a substantive award of costs include where there is a lack of co-operation with other parties, having regard to a proposal's accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; and where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective analysis.

Procedural grounds

4. PPG advises that in any appeal against non-determination, the local planning authority should explain its reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined. It goes on to state that if an appeal in such cases is allowed, that the local planning authority may be at risk of costs, if the Inspector concludes that there were no substantive reasons to justify the delay in determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. I understand that the statutory date for determining the planning application was 4 December 2023, and that the appeal was made on 29 January 2024, 8 weeks later. It is apparent that although agreement could not be reached, that the parties were corresponding in December 2023. It also appears that communication

from the Council subsequently ceased, and it has advised that this was due to the Christmas period, and a subsequent period of illness and annual leave.

6. It is unfortunate that the application was not determined within the target period, and that beyond an email dated 20 December 2023, that the evidence indicates that there was no further correspondence to the appellant from the Council, including no reply to the final email sent on behalf of the applicant on 19 January 2024 seeking an update and explanation for the continued delay.
7. It is not unreasonable that the Council delayed determination when it is apparent that there was ongoing dialogue between the parties. Thereafter, it is also not unreasonable that the Christmas period led to a brief hiatus in the progress of the application.
8. However, there was delay beyond the Christmas period, which by the time the appeal was submitted, amounted to around a further month and this is less well explained. Even if officer illness and annual leave commitments contributed to this delay, the evidence indicates that there was no correspondence with the applicant to advise this or provide a likely timescale for a decision being issued. Without explanation, I consider that this further delay was unreasonable behaviour.
9. However, given the apparent distance between the parties on the merits of the proposal and the Council subsequently indicating that it would have refused permission in any event, and advised the applicant that it was minded to do so in December 2023, it is not clear that better communication would have enabled the appeal to be avoided altogether. Therefore, it is not the case that the Council's behaviour in relation to the non-determination of the application has led to unnecessary expense in preparing the appeal.
10. The applicant sought to introduce amended plans after the submission of the planning application in relation to the addition of a ground floor kitchen area which had already been installed within the property. This kitchen area was shown on both the amended existing and proposed plans.
11. Although the appearance of the ground floor kitchen area on the existing plans was a reflection of fact, its inclusion on the proposed plans represented an amendment to the scheme. If the Council had accepted the amended drawings, given the concerns that it ultimately set out, it would have potentially narrowed the differences between the parties.
12. However, I also acknowledge that PPG states that there is no obligation for a Council to determine an application based on anything other than the information originally submitted once it is validated. Therefore, the Council was not unreasonable in taking the position that it did.

Substantive grounds

13. The appeal property has been subject to previous applications and appeal decisions. Those appeals to which I have been directed were all dismissed, although I acknowledge that in some cases the Inspectors found in favour of the applicant with regard to some issues. Overall, however, I cannot agree that the Council has a history of decisions at the appeal site being overturned, or that it has not had regard to the outcome of these decisions.
14. I have found that an objective application of HMO Standards¹ indicates that the proposed kitchen and bedroom arrangements complied with the standards in

¹ Harrow Council Houses in Multiple Occupation Conditions and Amenity Standards

terms of size, if not in relation to location. However, it is apparent that the Council's position was informed, in part, by the findings of a previous Inspector².

15. Notwithstanding previous appeal decisions, even if I were to agree that it should have been apparent to the Council that the HMO Standards make provision for a variety of scenarios of room configurations, its case was two-fold and related to both the size of the kitchen and its distance from some bedrooms. Therefore, it is unlikely that an appeal would have been avoided in any event.
16. It is also contended that the Council afforded insufficient weight to the existing kitchen access arrangements at the property, including the fact that a second-floor kitchen currently existed and was used by occupants of ground floor rooms. While I ultimately found in favour of the appellant on this point, the Council was entitled to consider whether such an arrangement would continue to be acceptable in a more intensive form of occupation.
17. A number of appeal decisions³ relating to cases involving Lawful Development Certificates ('LDC') in relation to the intensification of use of HMOs have been put before me, however while I have had regard to them, none show that the Council acted unreasonably in considering the matter of intensification of use, particularly as a planning application had been made, rather than an application for an LDC.
18. I have been made aware that the applicant has submitted a separate appeal⁴ in relation to the lawfulness of the ground floor kitchen area. Information relating to this appeal and the circumstances of it have been provided, along with details of various complaints made to the Council in relation to the conduct of its officers. It is contended that this illustrates a pattern of behaviour by the Council towards the applicant. I have afforded the Council opportunity to comment on this additional information.
19. As much of this evidence relates to a separate appeal, it is not directly relevant to the case before me and will be considered by the relevant Inspector in relation to that appeal and application for costs at the appropriate time.
20. Furthermore, the additional information relating to the conduct of the Council appears to relate to separate events which occurred after the submission of this appeal. Accordingly, the alleged behaviour could not have contributed to costs incurred in preparing the appeal which is before me.
21. As a result, I conclude that none of the additional evidence amounts to unreasonable behaviour in relation to this particular appeal.

Conclusion

22. Having regard to the above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Harding

INSPECTOR

² APP/M5450/W/23/3316618

³ APP/Y1110/X/15/3132534, APP/Z1775/C/23/3327364, APP/Z1775/C/20/3245106, APP/Z1775/C/20/3246078, APP/Z1775/C/20/3245110, APP/Z1775/C/20/3246079, APP/Z1775/C/20/3245108, APP/Z1775/C/20/3246077, APP/Z1775/C/19/3233187, APP/Z1775/C/19/3236610, APP/Z1775/C/19/3234941, APP/Z1775/C/19/3266831, APP/Z1775/C/19/3238003 & APP/Z1775/C/19/3238287

⁴ APP/M5450/W/24/3337694