



Costs Decision

Site visit made on 28 January 2025

by **C Livingstone MA(SocSci) (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Costs application in relation to Appeal Ref: APP/U5360/W/24/3352804

9 Clifden Road, Hackney, London E5 0LL

- 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 Sam Musk for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of planning permission for the erection of a ground floor 3m wrap-around extension and mansard roof extension, as well the change of use from a dwellinghouse to a large HMO 7 units.
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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. Paragraph 049 of the PPG indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things, the preventing or delaying of development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, failure to produce evidence to substantiate each reason for refusal on appeal, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The appellant has set out that the Council has failed to attribute weight to the realistic and legitimate fallback option. The appellant also asserts that the Council acted unreasonably in refusing the development due to the absence of a suitable agreement to demonstrate affordable rent levels or to secure the development as car free.
5. The Council do not dispute that the appellant has permitted development rights to convert the property to a six person House of Multiple Occupation (HMO). This is a legitimate fallback position that should have been afforded weight in the determination of the application.
6. The failure to give proper consideration to the fallback position resulted in them failing to properly evaluate the application. This inaccurate assertion had a significant influence on the Council's case and subsequent reasons for refusal,

which also resulted in a failure to make an objective assessment of the development overall. It therefore amounts to unreasonable behaviour.

7. In respect to refusing the application due to a failure to demonstrate that proposed rent levels would be suitable for people with low incomes, and securing the development as car free; I do not consider that the Council acted unreasonably. The absence of suitable information and planning agreements in relation to these matters is contrary to Policies LP22 and LP45 of Hackney A Place for Everyone Hackney Local Plan 2033 Strategic Planning Adopted July 2020 (HLP), which seek to ensure that HMOs meet an identified need for housing that is affordable for individuals on a low income and new development encourages sustainable modes of transport. In light of this, a planning condition would not be a suitable mechanism for securing these agreements.

Conclusion

8. I have carefully considered the points raised and the evidence before me, I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated only with respect to the Council's first reason for refusal. This reason for refusal related to the loss of family housing and in making its assessment the Council failed to give proper consideration to the fallback position, which is the applicants permitted development right to change the use of the property to an HMO with the capacity to accommodate six people. A partial award of costs is therefore justified.

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 the Council of the London Borough of Hackney shall pay Mr Sam Musk, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first of the Council's reasons for refusal, which related to the loss of family housing.
10. The applicant is now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If 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 Office is enclosed.

C Livingstone

INSPECTOR