Planning Inspectorate

Costs Decision

Site visit made on 17 July 2025

by S Burch BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th August 2025

Costs application in relation to Appeal Ref: APP/N5660/W/25/3364700
139 Sherwood Avenue, Lambeth, London, SW16 5EE

- 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 Asher Frankel for a partial award of costs against the Council of the London Borough of Lambeth.
- The appeal was against the refusal of planning permission for the change of use of existing property from a small HMO (Use Class C4) to a large house in multiple occupation (HMO) with 10 rooms (sui generis) involving the erection of a single storey ground floor rear extension. Erection of a rear dormer roof extension and installation of two rooflight to the front roof slope.

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. Unreasonable behaviour on the part of a local planning authority may include it making vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by any objective analysis, preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

4. The PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.

5. The applicant contends that the Council behaved unreasonably by failing to consider the lawful fallback position of the property being capable of lawful use as a small HMO, under Schedule 2, Part 3, Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO).

6. However, the Council clearly accept this position in paragraph 7.4 of its case officer report. As outlined in my decision, the crux of the issue is that the proposed change of use to a larger sui generis HMO would remove the flexibility provided by Schedule 2, Part 3, Class L of the GDPO to change between a C3 single dwellinghouse and a C4 smaller HMO, thereby resulting in the loss of a property capable of providing a single dwellinghouse. The refusal reason clearly notes the flexibilities of Schedule 2, Part 3, Class L of the GDPO, protecting a property 'capable' of providing a C3 single dwellinghouse. The Council are objecting to the loss of a property which could fall either within the C3 or C4 use class. They do not

deny the fallback position and I do not agree that they have acted unreasonably on this point.

7. Given the above, I do not agree that the Council refused the application on a basis that was factually incorrect and unsupported by proper evidence or policy interpretation.

8. My attention is drawn to an allowed award of costs against the London Borough of Hackney (Ref: APP/U5360/W/24/3352804, dated 24th April 2025). I am however not satisfied that it is directly comparable to the appeal scheme before me. Firstly, the referenced appeal was for the change of use from a dwellinghouse to a large seven bed HMO. Secondly, the first refusal reason in the referenced appeal does not mention the failure to demonstrate an identified local need. This is a requirement of Policy H9 of the Lambeth Local Plan 2020-2035 (2021), which the applicant clearly does not meet. Finally, the referenced appeal relates to a scheme in Hackney and is based on a different local plan context. Given the above reasons, I am therefore not satisfied that the circumstances of both appeals are the same.

9. The applicant also references an allowed appeal (Ref: APP/N5660/W/24/3337243, dated 27th August 2024), suggesting that the Council treated the fallback differently in this case. However, from the evidence before me it appears that the Council also refused this scheme for its effect on housing mix. Furthermore, the applicant did not mention this scheme until final comments stage, after the Council submitted their statement of case. I am not satisfied that the Council have behaved unreasonably on this point.

10. In their response to the Council's costs application rebuttal, the applicant advises that tenancy agreements and correspondence clarifying the use were provided. As outlined in my main decision, within the context of an appeal made under section 78 of the Town and Country Planning Act 1990 it is not within my remit to formally determine whether a particular use has already been established as claimed by the appellant. However, I note that the tenancy agreements and correspondence were all dated after the initial application was refused.

Conclusion

11. Based on my reasoning above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For the reasons set out, and having regard to all other matters raised, an award for costs is therefore not justified.

S Burch - INSPECTOR