



Costs Decision

Site visit made on 8 August 2025

by R Gravett BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Costs application in relation to Appeal Ref: APP/Z4310/W/25/3366669

51 Arundel Avenue, Liverpool L17 3BY

- 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 A & I Property for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for reinstate fire damaged building and carry out alterations to include new roof structure, front and rear gables, insertion of new windows and doors, dormer at rear and change of use from dwelling (Use Class C3) to 1 no. three bed and 1 no. five bed dwellinghouse in multiple occupation (Use Class C4); with associated installation of bike store to the rear.
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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. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature.
3. The applicant alleges substantive failings and specifically that if the Council had properly exercised its development management responsibilities, having regard to planning policy, then the appeal could have been avoided all together. The applicant had requested that the Council withdraw its first, second, fourth and fifth reason for refusal, suggesting that the Council acted unreasonably by refusing the original application without adequate reasoning and justification. It is therefore the applicant's contention that this has led to unnecessary costs being incurred in pursuing the matter through the appeal process.
4. The PPG states that examples of unreasonable behaviour by local planning authorities include 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. Furthermore, the PPG includes the failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, as possible examples of unreasonable behaviour.

5. The crux of disagreement between the parties is the interpretation and application of policies H10 and H11 of the Liverpool Local Plan 2013-2033 (2022) (LP). The applicant's cost claim asserts that the Council has incorrectly referenced LP Policy H11 which they consider would not be engaged because the existing HMO concentration in the area is 8%. LP Policy H11 is determinative in respect of the Council's first Reason for Refusal (RfR) as it aims to ensure that there is balanced housing provision meeting the needs of families and households of varying sizes.
6. However, as explained in my main decision, LP Policy H11 only requires that, in designated areas with an HMO concentration of less than 10%, proposals are to be considered against the criteria in LP Policy H10 paragraph 2; it does not require proposals to accord with these criteria. Therefore, the Council has behaved unreasonably in misapplying this policy in respect of the third and fourth RfR, contending that a conflict with LP Policy H10 paragraph 2 also means a conflict with paragraph 3 of LP Policy H11. Nevertheless, as it would have still been necessary to address LP Policy H11 in respect of the first RfR, I do not find that this unreasonable behaviour has caused the applicant to incur unnecessary or wasted expense in the appeal process.
7. I acknowledge that the Case Officer Report (COR) did not expressly refer to the Notice served on the previous owner of 51 Arundel Avenue (No 51) under Section 79 of the Building Act 1984, which required either: (a) works of repair or restoration, or (b) demolition of the building. Nevertheless, it is clear from the COR that a planning judgement was made that should the Building Act breach be resolved (reasonably assumed to be (a) above), then the property would be suitable for continued use as a family dwelling.
8. Moreover, on my reading, the COR does not make the claim that it would be possible to obtain a mortgage for the property in its current condition, as asserted by the applicant. Rather, with regard the applicant's case to the contrary, the COR states that 'no evidence has been provided to substantiate this claim and therefore it is not afforded any weight.' Despite the Council's request it be disregarded, it was clearly open to the applicant to submit professionally prepared viability evidence with the appeal to defend the Council's reason for refusal. However, such evidence, or indeed any substantive evidence that the property would not secure a mortgage, was not before the Council during its determination of the planning application. Therefore, I do not find that the Council has acted unreasonably in exercising its judgement on the weight to be afforded this matter, and this is further justified in the Council's evidence to the appeal.
9. The COR lists 'Supplementary Planning Guidance Note 7 – Conversion of Buildings into Flats and Bedsits (SPG)' as relevant to the proposal. Although it does not explicitly deal with this SPG under 'Principle of Development,' I am satisfied that the COR nevertheless makes a reasonably robust and objective analysis of whether No 51 could continue to be used as a single dwelling, including with reference to its size and location. The applicant's evidence elsewhere is that, in any event, this SPG is guidance and not planning policy.
10. Based on the above, there was clearly a fundamental disagreement between the parties on the merits of this part of the case, and consequently the contribution No 51 makes to the supply of family housing. To my mind, this could have only been resolved through the appeal process.

11. Matters relating to whether the proposed development would preserve the setting of the Grade II listed building, the effect on the significance of the registered park and garden and on the character and appearance of the CA, and the effects on living conditions are broadly subjective matters, involving planning judgement. Despite disagreeing with the Council on some of these matters in my main decision, there is nothing inherently unreasonable with the Council's assessment of them, and it has adequately substantiated the relevant reasons for refusal. I do not find the language used by the Council in their submissions to be divisive, or any of the claims made to be spurious, as alleged by the applicant. The Council has also given a reasoned justification for why similar proposals for HMOs elsewhere in the City, which are referred to by the applicant, are not comparable to the appeal proposal.
12. I note that the Council's evidence states that 'dormer extensions are not permitted in conservation areas', but this is not clarified with reference to an Article 4 Direction. Further the applicant asserts that the Council described No 51 as a 'Victorian Villa,' although I can find no reference to this in the evidence. Nevertheless, I am not persuaded that either of these would amount to a deliberate or unfounded claim, rather than a genuine mistake or error.
13. I agree that it was unreasonable, in the absence of corroborating evidence in respect of the cause of the fire, for the Council to refer to paragraph 209 of the National Planning Policy Framework which relates to deliberate neglect of, or damage to, a heritage asset. However, I do not find that addressing this matter would have amounted to unnecessary or wasted expense because the professionally prepared Heritage Statement was, in any event, necessary to fully assess the significance of the heritage assets and the effect of the proposals on them.
14. Finally, I do not find the Council has behaved unreasonably in relying on the most recent 5-year housing supply information available to it, and I consider reviewing the background reports to be a necessary part of an applicant's justification of a housing proposal.
15. Considerable detail has been put forward by the parties on both the planning appeal and costs claim and rebuttal. However, for the reasons I have given above, I have not found that the Council has acted unreasonably in refusing the application. In my view, the reasons behind the Council's decision are set out fully and substantiated. Although I reached a different conclusion on some of the planning merits at issue, the decision the Council took was not wholly unreasonable and it would not have prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and other material considerations.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

R. Gravett

INSPECTOR