



Costs Decision

Site visit made on 10 September 2019

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/G4240/W/19/3232621 Gardeners Arms, 279 Edge Lane, Droylesden M43 6BS

- 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 D Chinta for a full award of costs against Tameside Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from a public house (Use Class A4) to a large, 12-bedroom House in Multiple Occupation (sui generis use).
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 30 of the government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of 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 and/or failure to produce evidence to substantiate each reason for refusal on appeal.
4. The single reason for refusal was that the development would conflict with the National Planning Policy Framework (the Framework) in that it would not promote community cohesion or resilience and would lead to an increase in the fear of crime.
5. The planning application subject of the appeal was considered by the Council's Speakers Panel (Planning) on two occasions (20 March 2019 and 29 May 2019). On each occasion, the recommendation of the Council's planning officers was to grant permission following an assessment that concluded the proposal was in compliance with the development plan. The Panel initially deferred its decision to seek further representation from the local police force.
6. At the initial sitting the Council's reporting officer advised that the tenancy of the proposed accommodation was not material to the consideration of the application. At the later hearing the Panel determined that planning permission should be refused for the reasons later set out in the Council's decision notice.

On that occasion the reporting officer had made explicit reference to the requirement to evidence concerns and avoid unsubstantiated assumptions about the characteristics of future occupiers of the development, bearing in mind that the tenancy details were unspecified.

7. The refusal reason consists of two elements: the finding that tenancy of the building was likely to be on a transitory basis and therefore would fail to promote community cohesion and resilience; and, that occupation as a house in multiple occupation (HMO) would be likely to exacerbate criminality and anti-social behaviour and lead to an increase in the fear of crime in the locality.
8. In its determination the Council has assumed a particular nature of occupation that, whilst not unreasonable in itself, is not based on any firm evidence. It has then proceeded to determine the application by correlating the assumed occupation with an adverse impact on community cohesion and resilience. Again, no reasoning is provided to substantiate this conclusion.
9. Fear of crime is referenced in paragraphs 91 and 127 of the Framework, and was cited by the Council. It has been identified in the courts as a material consideration in the determination of a planning application. However, in the Court of Appeal in *Smith v FSS & Mid Beds [2005]* and *West Midlands Probation Committee v SSE [1997]* it is established that clear evidence must be provided to demonstrate that the proposed use of the land, rather than its occupancy, gives rise to a legitimate planning concern.
10. The Council relies heavily on the views of the local police force, which it is entitled to do. Although the report of the local police describes examples of problem HMOs elsewhere this is as likely a consequence of the occupancy as opposed to the nature of the accommodation. Again, in the absence of any tangible evidence to directly associate the proposed development with criminality and/or antisocial behaviour the Council has relied on a generalised approach and has failed to justify that the proposed land use would directly give rise to a fear of crime. This is contrary to the Courts' findings and the advice of the PPG.
11. The appeal costs regime is partly in place to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay. I have found that the Council behaved unreasonably in reaching its conclusions. These were based on generalised or unsubstantiated assertions about the proposal's effect and were unsupported by clear evidence. This has led to the necessity for the applicant to engage in appeal proceedings resulting in additional time and expense.
12. I therefore conclude that a full award of costs to cover the expense incurred by the applicant in contesting the Council's unsubstantiated reason for refusal is justified.

Costs Order

13. 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

Tameside Metropolitan Borough Council shall pay to Mr D Chinta the costs of the appeal proceedings described in the heading of this decision.

14. The applicant is now invited to submit to the 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.

R Hitchcock

Inspector