



Costs Decision

Site visit made on 14 November 2023

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2023

Costs application in relation to Appeal Ref: APP/B1605/W/23/3323028 6 Marsh Lane, Cheltenham GL51 9JB

- 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 Jonas Martins (Verum Investments Ltd) for a full award of costs against Cheltenham Borough Council.
 - The appeal was against the refusal of planning permission for change of use from a single dwelling to a 4 bed HMO.
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Decision

1. The application for a full 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. In this instance, the applicant refers to the Council's alleged unreasonable approach during the processing of the planning application. The applicant states that this behaviour caused the application to be refused, thereby necessitating the preparation of the appeal. The applicant seeks a full award of costs.
3. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. Policy HM5 of the Cheltenham Plan (2020) states that planning permission will be granted for Houses in Multiple Occupation (HMOs) provided that certain criteria are met. One of these criteria is that the proportion of HMOs does not exceed 10% of all residential properties within a 100m radius of the application site. The policy and its supporting text state that decisions will be based on the results of a biennial survey of HMOs in the St Pauls area undertaken by the Council, and that this data will be available for publication on completion of each survey. The applicant would therefore have had a reasonable expectation that the decision would be made on the basis of the published results of the latest biennial survey.
5. Based on the latest published biennial survey of HMOs in the St Paul's area undertaken by the Council (dated November 2022), a copy of which has been provided by the applicant, the proposal does not breach the 10% threshold set out by this policy.

6. In reaching its decision, the Council took into account raw survey data provided by the Council's Housing Standards Team, and therefore took into account an unpublished data source. The reliance on this led to the refusal of the planning application. I find that the refusal of the application based on a data source which went beyond the scope of the policy amounts to unreasonable behaviour and that this unreasonable behaviour resulted in unnecessary or wasted expense, as described in the PPG.
7. Separately, it is asserted that the Council has acted unreasonably in failing to actively engage with the applicant. Whilst this is unfortunate, the PPG¹ is clear that costs awarded cannot be claimed for the period during the determination of the planning application.

Costs Order

8. 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 Cheltenham Borough Council shall pay to Mr Jonas Martins (Verum Investments Ltd), the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Cheltenham Borough 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.

N Robinson

INSPECTOR

¹ Paragraph ID: 16-033-20140306