

Costs Decision

Site visit made on 3 January 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2017

Costs application in relation to Appeal Ref: APP/D1590/W/16/3155827 49 Milton Road, Westcliff on Sea, Essex SS0 7JP

- 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 LT Properties (Mr Toby Marsden) for a full award of costs against Southend-on-Sea Borough Council.
 - The appeal was made against the refusal of planning permission for development described as '(C4) HMO'.
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Decision

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

Reasons

2. 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. The applicant has applied for an award of costs based on the Council's unreasonable behaviour in the length of time taken to determine the application, the behaviour of Councillors when considering the application, the failure to consider that the appeal property could be used for a Class C4 use without the need for planning permission and the failure to substantiate the reasons for refusal. It is claimed that applicant has, therefore, incurred wasted expense in submitting an appeal which should not have been necessary.
 3. The cost claim also refers to delays in submitting other planning applications and financing problems. However, these matters are not eligible for an award of costs.
 4. Whilst the period for determination of the application exceeded the statutory period, it was open to the applicant for appeal for non-determination at any time following the expiry of the 8 week period. Moreover, PPG paragraph Reference ID: 16-033-20140306 advises that costs cannot be claimed for the period during the determination of the application. My decision is based on the planning merits of the proposal and the behaviour of Councillors is not a matter for me. Therefore, I find that the Council's behaviour does not give rise to an award of costs on procedural grounds.
 5. The applicant's appeal evidence indicates that the Council's enforcement section had found that the implementation of the Class C4 at the property did not amount to a breach of planning control and reported the matter to the Council's
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3 August 2016 development control committee. It would appear that this was not taken into account when the Council produced its appeal statement, dated December 2106.

6. The existing use of the property was relevant to the consideration of the application, since it represents a baseline position against which to judge the effects of the proposed use. In my view, it has a significant bearing on the consideration of both the highway safety and character and appearance reasons for refusal. By not taking this matter into account the Council did not considered all relevant matters and, as a result, has failed to substantiate the reasons for refusal.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 Southend-on-Sea Borough Council shall pay to LT Properties (Mr Toby Marsden), the costs of the appeal proceedings such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
9. The applicant is now invited to submit to Southend-on-Sea 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.

Simon Warder

INSPECTOR