



Costs Decision

Site Visit made on 6 August 2019

by Alison Scott BA(Hons) DipTP MRTPI

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

Decision date: 28 August 2019

Costs application in relation to Appeal Ref: APP/A5840/D/19/3229722 24 Bywater Place, London SE16 5ND

- 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 R Kieran for a full award of costs against the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for a single storey side / rear extension at ground floor level, conversion of integral garage into a habitable room at ground floor level, loft conversion / dormer extension at third floor level, internal reorganisation / refurbishment works (all levels).
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Decision

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

Reasons

2. Paragraph 30 of the national Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the 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. The Applicant submits that the Council has acted unreasonably by refusing a householder planning application for a number of residential extensions to the dwelling on the basis that its internal layout would equate to a change of use to a large-scale House in Multiple Occupation (HMO). The application submitted to the Council was a householder application with no change of use sought as part of the description on the application form.
4. The Council argue that the physical layout of a building can denote its use and that this should be taken into account together with other material considerations. Whilst I am aware that there is history of HMO's within the area, I am also aware that other C3 dwellings have been granted permission for similar extensions and although the Council explain that the estate's management company have described the site as an HMO, there is no evidence before me to support this claim.
5. The area to which the site is located is covered by an Article 4 Direction preventing the permitted change of use of a C3 dwellinghouse to a C4 HMO. Furthermore, planning permission is required in its own right to change the use from C3 to sui generis if more than 6 unrelated persons occupy the dwelling. It is accepted that there are powers in place for the Council to resist changes of use away from C3 in the area.

6. Having regard to the provisions of the development plan, national planning policy and other material considerations, the development was limited to external extensions only, and the effect of these was deemed to be acceptable when assessed against policy. Therefore, the development should reasonably have been permitted and the appeal avoided as these extensions did not form part of the reason for refusal. The refusal of planning permission was based on internal arrangements that the Council consider would give rise to the dwelling becoming occupied as an HMO. I do not consider the Council have provided sufficiently robust evidence to substantiate their findings. The refusal of planning permission therefore constitutes unreasonable behaviour, and this has resulted in wasted or unnecessary costs to arise for the Applicant in having to address the reasons for refusal.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance has been demonstrated and that an award of costs is justified. In respect of the Applicant seeking compensation due to delay to building works, no award of costs can extend to compensation for indirect losses as costs should generally relate to the appeal process and the Applicant will have had to submitted an application for planning permission irrespective of whether permission was granted or not.

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 London Borough of Southwark shall pay to Mr R Kieran, the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to the London Borough Council of Southwark, 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.

Alison Scott

INSPECTOR