



Costs Decision

Site visit made on 14 January 2020

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Costs application in relation to Appeal Ref: APP/D1590/W/19/3238804 49 Warrior Square East, Southend-on-Sea SS1 2JJ

- 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 Niall Underdown for a full award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of an application a change of use from a Dwelling-house (Class C3) to a House in Multiple Occupation (HMO) Sui Generis.
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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 states two grounds for the application; that the proposal adheres to Policy CP8 of the Southend-on-Sea Core Strategy 2007 (SOSCS), which says the Council will resist development proposals that involve the loss of existing valuable residential resources, having regard to the need to safeguard an adequate stock of single-family dwelling-houses, and a failure to substantiate the reason for refusal related to the living conditions of neighbouring occupiers.

Single Family Dwelling

4. The applicant contends that the proposal is not in conflict with Policy CP8 of SOSCS as it is not a single-family dwelling, rather an HMO (C4) for 6 people under permitted development rights. The Council disagree and contend that the applicant has converted the property to an HMO without planning permission. However, at my site visit, and contained within the submitted evidence, I noted that there is a current HMO (C4) licence issued by the Council, and that the dwelling meets HMO standards as set out in the Councils' adopted Essex Approved Code of Practice 2018. Therefore, the proposal cannot result in the loss of family accommodation as it has been operating as a licensed (C4) HMO for some time.
5. It follows then, that in this specific case the Council has acted unreasonably by not reasoning why the proposal was in conflict with the adopted development

plan policy when the existing use and the HMO licence indicated that the building was being used as an HMO. As such, the applicant has found it necessary to go through the appeal process. This has resulted in unnecessary and wasted expense in an appeal which may have been avoidable.

Living Conditions

6. In respect of the living conditions of neighbouring occupiers the Council argue that an increase in permissible occupants at No 49 would result in additional noise and disturbance. I acknowledge the applicants concerns that the Council did not substantiate their reasons for refusal. Indeed, there is limited evidence to support this reason, including the absence of technical information related to the built fabric of the dwelling. Moreover, whether or not the property is in multiple occupation or occupied as a single dwelling, the current ambient noise levels in the surrounding area are unlikely to be substantially increased by a property of this size.
7. The Council has not provided sufficient evidence to justify its' decision making, and in doing so may have prevented a development that should have been permitted. Accordingly, the Council has acted unreasonably and caused the applicant to submit the appeal resulting in the applicant incurring unnecessary and wasted expense.

Conclusion

8. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described by the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Mr Niall Underdown, the costs of the appeal proceedings described in the heading of this decision.
10. 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. 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.

J E JOLLY

INSPECTOR