Costs Decision

Site visit made 18 May 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Costs application in relation to Appeal Ref: APP/D1780/W/20/3244851
267-271 Portswood Road, Southampton SO17 2LA

- 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 Joseph Muscat for a full award of costs against Southampton City Council.
- The appeal was against the refusal of planning permission for the erection of an additional floor to create 4 x 1-bed flats with associated cycle/refuse storage following partial demolition of existing building to create new entrance and extension of existing restaurant flue.

Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The applicant considers that the Council acted unreasonably due to the absence of explicit reference to paragraph 118e of the National Planning Policy Framework (the Framework) in the advice given to Members of the Planning and Rights of Way Panel when determining the planning application. Paragraph 118e stipulates that planning decisions should support opportunities to use the airspace above existing residential and commercial premises for new homes.

4. The PPG[1] further advises that local planning authorities are required to behave reasonably in relation to substantive matters at the appeal, and a list of examples is given including the preventing or delaying of development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

5. However, the refusal reasons of the Council did not object in principle to the use of airspace above the commercial premises and this is explicitly stated in the Council's appeal statement[2] which does, amongst other matters, reference the advice in paragraph 118e of the Framework[3]. Instead, they raised concerns in relation to the proposal's impact on the character and appearance of the

[1] Paragraph 049 Reference ID 16-049-20140306
[2] Paragraph 3.12
[3] Paragraph 3.3

area, the living conditions of future occupants, the adequacy of cycle parking provision and the failure to mitigate the impact on a designated habitat site. Moreover, the reasons for refusal set out in the decision notice are reasonably specific and relevant to the application and each one identifies which policies in the development plan the Council considered to be most relevant.

6. Paragraph 118e of the Framework, in giving general support for upward extensions to provide new homes, goes on to particularly refer to allowing development that is consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers. Furthermore, paragraph 3 of the Framework states that the Framework should be read as a whole. Therefore, paragraph 118e does not purport to give such support irrespective of any other impacts the development might have. For example, the consequent impact on the street scene is clearly relevant, as is the advice in section 12 of the Framework in relation to achieving well-designed places.

7. On this basis it is not shown that, had explicit reference to paragraph 118e of the Framework been made to Members at the meeting on 16 July 2019, they would inevitably have reached a different decision thereby avoiding the appeal, and the balance of evidence suggests otherwise. Whilst it may have been helpful to refer to it, given that Members main concerns lay elsewhere than with the principle of the upwards extension, in these circumstances if officers' failed to explicitly refer to paragraph 118e of the Framework then this would not have amounted to unreasonable behaviour. It follows that the applicant was not put to unnecessary or wasted expense in testing at appeal the matters of concern that were set out in the decision notice.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector