



Costs Decision

Site visit made on 26 May 2020

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2020

Costs application in relation to Appeal Ref: APP/A2280/W/19/3242570 14 Duncan Road, Gillingham ME7 4LE

- 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 Jazz Doklu for a full award of costs against The Medway Council.
 - The appeal was against the refusal of the removal of Condition 4 of application Ref MC/18/2676 with states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and reenacting that Order with or without modification), the extension herein approved shall remain in use with the rest of the house as a single family dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order amending, revoking and re-enacting that Order with or without modification) and no change of use to C4 shall be carried out unless planning permission has been granted on an application relating thereto.
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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 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.
3. In this case, the appellant is seeking a full award of costs relating to the work carried out in relation to appeal ref APP/A2280/W/19/3242570 as it considers the Council to have acted unreasonably by refusing the removal of Condition 4 of application Ref MC/18/2676.
4. Condition 4 sought to remove permitted development (PD) rights and ensure that the approved extension would remain in use with the rest of the house as a single family dwelling and that no change of use to C4 Houses in Multiple Occupation (HMO) would be carried out unless planning permission was granted.
5. The Council refused the removal of Condition 4 on the basis that it would prejudice the character of the area, which is predominantly dwellings in single family occupation, as it would result in a harmful impact on neighbouring residential amenity and could lead to increased on-road parking due to lack of provision of off-street parking.

6. The PPG provides examples of unreasonable behaviour by local planning authorities. Unreasonable behaviour includes substantive matters such as failure to produce evidence to substantiate a reason for refusal on appeal and imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, thus not complying with the guidance in the National Planning Policy Framework on planning conditions and obligations.
7. The Council failed to provide substantive evidence to confirm how, through the removal of condition 4, the character of the area would be affected. Furthermore, the Council has also failed to provide substantive and convincing evidence to demonstrate why it considers HMOs to be of particular concern in the area in order to justify the exceptional circumstances needed to restrict PD rights as per paragraph 55 of the National Planning Policy Framework (the Framework).
8. Concerns in terms of the impact the removal of Condition 4 would potentially have on living conditions, particularly noise and disturbance due to the perceived increase in usage of the house's outdoor amenity space, were not substantiated by the Council. No evidence was provided to demonstrate that six individuals living independently would be reasonably expected to use the outdoor amenity space more frequently or cause more disturbance than, for example, a family of six.
9. The Council did raise a potentially valid concern in terms of the expected increase in noise due to six individuals moving independently within a house and naturally creating more comings and goings than a family of the same size. Nevertheless, the Council failed to substantiate this claim and failed to take into account that Duncan Road is not, at present, a particularly quiet street, therefore the relatively potential small increase created by the HMO would not demonstrably alter existing levels of noise.
10. The Council, in its reasons for refusal, has also highlighted parking and highway safety concerns. As the proposed development does not include off-street parking and parking is restricted in the vicinity of the appeal site, there could have been some merit in the Council's claim. Nevertheless, no evidence was provided to demonstrate, for example, that HMOs in the area have been found to require more parking spaces than a house of a similar size occupied by one family. Therefore, this claim too remains unsubstantiated.
11. 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

12. 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 Medway Council shall pay to Mr Jazz Doklu, 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.

13. The applicant is now invited to submit to the 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.

Andre Pinto

INSPECTOR