
Costs Decision

Site visit made on 14 July 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2020

Costs application in relation to Appeal Ref: APP/D1590/W/20/3244314 20 Honiton Road, Southend-On-Sea SS1 2RT

- 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 planning permission for change of use from 6-person HMO (Use Class C4) to 10-person HMO (Sui-Generis).
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Decision

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

Reasons

2. The 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant states two grounds for the application; that the Council did not seek to clarify the room sizes with the appellant, which would have confirmed that all rooms comply with the Essex HMO Amenity Standards and a failure to substantiate the reason for refusal related to the living conditions of neighbouring occupiers.

Room sizes

4. I note that during the determination of the planning application that various plans were submitted for the proposal. The Council has confirmed that the Decision Notice and Delegated Report incorrectly referred to drawing A101 and that this should have been A103 existing and proposed as the previous plans were superseded. The Council also confirmed that they rejected the sketch plans (Existing floor plans - scale 1:100@A4 and Proposed Floor Plans - scale 1:100@A4), which accompanied the application because of scaling and accuracy issues.
5. The Council has assessed the proposal on the basis of the submitted plans A103. The Council has advised that the applicant's plans were measured using the scale and was measured electronically. Therefore, it would be for the applicant to submit the necessary plans for the Council to determine the proposal and there is no obligation on the Council to otherwise verify the room sizes. Accordingly, in this aspect of the appeal, the Council has not acted unreasonably.

Living conditions

6. In terms of the living conditions of the neighbouring occupiers, the Council has stated that an increase in occupants at the property would result in additional noise and disturbance. I acknowledge the applicant's concern that the Council did not sufficiently substantiate its reason for refusal.
7. Whilst the Council has suggested that the typical layout of houses on the road would have a bedroom adjacent to the first floor kitchen area of the proposal, the example provided was not the adjacent property. The property is already in use as a House in Multiple Occupation (HMO), and I have not been provided with substantive evidence to suggest that the existing use and the internal arrangements has had a detrimental effect on the living conditions of the neighbouring occupiers or that the proposed use would cause harm in this respect.
8. Therefore, there is limited evidence to support this reason for refusal. In any case, whether the property is in multiple occupation or occupied as a single family dwelling, the current noise levels in the area are unlikely to be substantially increased by the additional occupants. Consequently, the Council has not provided sufficient evidence to justify its' decision in this regard.

Conclusion

9. The Council's reason for refusing planning permission, as set out in its Decision Notice, consisted of 2 distinct elements: the finding that the room sizes would not be an adequate size, and the finding that the proposed development would harm the living conditions of the neighbouring occupiers, with particular reference to noise and disturbance. I have found that the Council behaved unreasonably in reaching the second of these conclusions, but not the first.
10. I therefore conclude that in relation to the second reason for refusal, that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described by the Guidance, has been demonstrated and that a partial award of costs, to cover the expense incurred by the applicant in contesting the second part of the Council's reason for refusal, is justified.

Costs Order

11. 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 limited to those costs incurred in relation to the living conditions of the neighbouring occupiers, with particular reference to noise and disturbance; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. 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.

D Peppitt

INSPECTOR