



Costs Decision

Site visit made on 12 November 2020

by **Simon Hand MA**

Decision date: 01 December 2020

Costs application in relation to Appeal Ref: APP/J0350/X/20/3251303 53 Lansdowne Avenue, Slough, SL1 3SG

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Slough Borough Council for a full award of costs against Mr Faz Hussain.
 - The appeal was against the refusal of a certificate of lawful use or development for an existing change of use from a dwellinghouse (Use Class C3) to a House of Multiple Occupation (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. The Council argue that the appeal had no chance of success and I would agree with them. No attempt was made to argue the change from a C4 HMO to a sui generis HMO was not a material change of use, presumably because firstly, it obviously is a material change of use and secondly because the issue had effectively been settled in the recent appeal decision affecting the property.
3. Given that, the only way the appeal could succeed was if the material change of use was immune from enforcement action because of the passage of time. The only argument the appellant makes is that the change to an HMO began more than 4 years ago.
4. Firstly the correct time period is 10 years and not 4. S171B is the part of the Act that deals with time limits. A material change of use falls within s171B(3) which is 10 years. The only exception is outlined in s171B(2), which states "*where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*". This case does not consist of a change of use of a building to a dwellinghouse, it already is a dwellinghouse. It is the material change of use of a dwellinghouse from a C4 HMO to a sui generis HMO which is quite a different thing. The correct time period is therefore 10 years and as the HMO use only began in 2012 this cannot be made out.
5. Secondly, there is no dispute the HMO use began in 2012, but the licence for a sui generis HMO (that is for 8 people not 6) was only granted in 2019. Various tenancy agreements and tenancy deposit certificates have been provided but these only show there was an HMO use, which is not in dispute. There are

tenancy agreements for 4 individuals dated in 2013 and deposit protection certificates for 6 individuals dated to 2019 or 2020. So even if 4 years had been the correct time period there was nothing to suggest a sui generis use commenced before 2019.

6. The rest of the appellant's representations concerned planning policy, the Housing Act and the merits of allowing a sui generis HMO, all of which are irrelevant to an LDC appeal.
7. In my view the appeal had no chance of success, and as the appellant was professionally represented this should have been obvious from the start. 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

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 Mr Faz Hussain shall pay to Slough Borough Council, 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.
9. The applicant is now invited to submit to Slough 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.

Simon Hand

Inspector