The Planning Inspectorate

Costs Decision

Site visit made on 15 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Costs application in relation to Appeal Ref: APP/D1780/W/20/3259428
43-49 London Road, Southampton SO15 2AD

- 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 I Bajar for a full award of costs against Southampton City Council.
- The appeal was against the refusal of prior approval for a change of use of part of the ground floor of the building from financial and professional services (Class A2) to 4 x studio flats (Class C3).

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The applicant has set out, in summary, that chartered surveyor evidence demonstrates that the smaller unit would be a betterment to the commercial area, would enhance viability and could be easily let with a variety of tenants. The Council has not produced any marketing or other evidence to justify the reason for refusal, the need for the larger unit to remain and the Council has been unable to provide any counter evidence to support its position. The vacant premises elsewhere, that the former Barclays Bank is now a hostel/care use and that the fact that this is a secondary retail area is clear evidence to justify that the change would be appropriate whilst retaining a retail frontage.

4. The applicant explains that by providing a more viable floorspace it would enhance the area in commercial terms while providing extra residential units where residents could utilise existing services.

5. It is argued that the appeal could have been avoided, because the Council have not provided any market evidence to inform the refusal. The full costs of the appeal are sought as the Council has chosen to ignore the Class M prior notification requirements of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) while not having suitable evidence to do so.

6. The Council has responded to argue that it has not acted unreasonably and followed appropriately the procedures and prior notification tests set out in Class M of the GPDO. The Council highlight that no viability evidence or other

justification was submitted as part of the proposal and the application was determined based on relevant policies and retail information at the time.

7. The Council explain that it is apparent from the local development plan that there is a clear policy stance to retain viable units and this proposal would erode the sustainability of the area. The Council argue the case that the current unit adds to the mix of units and the reduction in size would severely reduce the units' viability, and the vitality of the shopping area. Accordingly, it is said there is no unreasonable behaviour on behalf of the Local Planning Authority to warrant the award of costs as requested by the applicant on either procedural or substantive grounds; either in full or in part.

8. Examining these matters, the application for costs is made mainly on the basis that the Council did not take into account the submitted information and incorrectly took the view that the prior approval should be refused. The analysis of this situation, consideration of the evidence and the assessment of the prior notification test, regarding whether it is undesirable for the building to change use, is a matter of planning judgement. I see no substantive reason to demonstrate that the Council has not followed the correct procedures as set out in the GPDO and it will be seen from the decision that I generally agree with the Council and its conclusion based on the information that is available, including the market evidence. This was a matter of planning judgement and the approach of the Council was not unreasonable in this respect.

9. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR