
Costs Decisions

Site visit made on 19 May 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Appeal A: APP/D1780/W/20/3264983

66 Alma Road, Southampton SO14 6UX

- 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 Ranjit Singh of Smart Homes (Southampton) Ltd for a full award of costs against Southampton City Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development for change of use from 8-bed to 10-bed house in multiple occupation (HMO, class sui generis) with associated bicycle storage
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Appeal B: APP/D1780/W/20/3264985

66 Alma Road, Southampton SO14 6UX

- 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 Ranjit Singh of Smart Homes (Southampton) Ltd for a full award of costs against Southampton City Council.
 - The appeal was against the grant subject to conditions of planning permission for change of use from 8-bed to 9-bed house in multiple occupation (HMO, class sui generis), installation of ground floor window to west elevation and associated bicycle storage. (Resubmission).
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Decisions

Appeal A

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

Appeal B

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

Reasons

3. The Planning Practice Guidance (PPG) 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.
4. The applicant claims that the Council acted unreasonably in relation to Appeal A on grounds which I interpret as failing to properly assess the scheme against its adopted standards, policies and guidance.

5. The applicant claims that the Council acted unreasonably in relation to Appeal B on grounds which I interpret as imposing conditions that are not necessary, relevant to planning or to the development to be permitted, enforceable, precise or reasonable in all other respects.

Appeal A

(a) Adopted standards

6. The applicant claims that the Council should have assessed the scheme against adopted standards in relation to HMO licensing, and, given that the scheme complied with these standards, it should have approved the scheme.
7. The officer report did briefly acknowledge compliance with licensing standards, but stated that this was not a determining factor. Indeed, though the standards have been adopted by the Council as a broader organisation, they clearly do not form the basis against which the acceptability of accommodation can be judged for planning purposes. This is made reasonably clear within the Houses in Multiple Occupation Supplementary Planning Document (HMO SPD), which indicates that the control of standards through licensing exists outside the planning system.
8. The applicant has otherwise acknowledged that it is not unreasonable for a planning officer to exercise planning judgement about the quality of living accommodation. I agree, whilst taking a different view to that of the Council. The Council did not therefore act unreasonably in its assessment, or in failing to approve the scheme on the basis of its compliance with licensing standards. The claim thus fails in this regard.

(b) Policies

9. Policy CS13 of the Core Strategy within the decision notice, despite the fact that this contains no relevant provisions in relation to residential amenity. Though the Council insists that this falls with the scope of 'architecture', simple reading of the relevant section of the policy indicates that its concern lies in external aspects of building design considered relative to their context. Given its lack of specific relevance, reference to Policy CS13 was therefore unreasonable.
10. I note that applicant's attempts to gain clarification in relation to Policy CS13, and the need for this to be addressed within the context of the appeal. The amount of work generated cannot have been substantial as Policy CS13's lack of relevance appears to have been apparent to the applicant. The fact of its irrelevance nonetheless means that any such work and related expense was unnecessary. The claim thus succeeds in this regard.

(c) Guidance

11. As above, the generalised nature of reference to the HMO SPD and Residential Design Guide SPD within the decision notice generated some additional effort on the part of the applicant. However, whilst the Council could have been more helpful, time spent consulting otherwise relevant adopted guidance cannot be considered unnecessary within the normal context of preparing or presenting a case. The claim thus fails in this regard.

Appeal B

12. My main Decision sets out in detail an assessment of whether or not the requirements set out in Condition 2 and Condition 3 were both necessary and reasonable.

(a) Condition 2

13. I have already found that taken within the context of the proposal and the Council's decision, the requirement to remove the en-suite imposed within Condition 2 was both necessary and reasonable. This is notwithstanding my own resolution to delete the requirement, which specifically arose from my findings in relation to Appeal A.
14. The Council's failure to provide clear justification for imposition of the requirement set out in Condition 2 was nonetheless unreasonable. It is however apparent that the Council's position was otherwise understood by the applicant. As such, no unnecessary or wasted expense was incurred in the appeal process in relation to Condition 2. The claim thus fails in this regard.

(b) Condition 3

15. Again, I have already found that the requirement imposed within Condition 3 was irrelevant to the development permitted, and would otherwise have been both unnecessary and unreasonable if interpreted in the way suggested by the Council. It must follow that any expense generated in addressing Condition 3 within the context of the appeal was unnecessary. The claim thus succeeds in this regard.

Conclusion

16. For the reasons outlined above, I find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has been demonstrated in relation to the Council's reference to Policy CS13 in relation to Appeal A, and through the imposition of Condition 3 in relation to Appeal B. A partial award of costs is therefore justified in relation to both Appeal A and Appeal B.

Costs Orders

Appeal A

17. 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 Southampton City Council shall pay to Mr Ranjit Singh of Smart Homes (Southampton) Ltd, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the rebuttal of conflict claimed to arise with Policy CS13 of the Core Strategy; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Southampton City 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.

Appeal B

18. 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 Southampton City Council shall pay to Mr Ranjit Singh of Smart Homes (Southampton) Ltd, the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with Condition 3 imposed on permission Ref 20/01108/FUL; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Southampton City 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.

Benjamin Webb

INSPECTOR