

Costs Decision

Site visit made on 12 October 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2021

Costs application in relation to Appeal Ref: APP/A2280/W/21/3271194 87 Rock Avenue, Gillingham, Medway ME7 5PX

- 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 Rishabh Dawar for a full award of costs against Medway Council.
 - The appeal was against the refusal of planning permission for change of use from 6-bed house of multiple occupancy (Class C4) to 7-bed house of multiple occupancy (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 Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is also at risk if it fails to produce evidence to substantiate each reason for refusal on appeal, or makes vague, generalised or inaccurate assertions which are unsupported by any objective analysis.
3. The Council asserts that use of the appeal property as a 7-bedroom House in Multiple Occupation (HMO) would significantly intensify the occupancy of the property with regard to noise and disturbance, detrimental to the amenity of the occupiers of nearby family homes. However, its report on the application also confirms that a condition restricting the number of residents at the property could be imposed, and I have found that a slightly modified version of the Council's suggested occupancy condition would be appropriate in this case. As a result, the increase in the potential number of occupiers at the site from existing would be limited, and the Council has put forward very little information to corroborate concerns over the levels of activity that are realistically likely to result. Moreover, additional activity is not in itself harmful, and there is no clear evidence to demonstrate how activity that may reasonably occur would cause noise or disturbance that would impact on neighbouring occupiers in any meaningful way so as to warrant refusal.
4. Similarly, I am not satisfied that it has reasonably substantiated its position that the proposal would prejudice the character of the area, particularly when compared to the existing use of the property as a 6-bedroom HMO.

5. I note criteria within saved Policy H7 of the Medway Local Plan 2003 outlining that multiple occupation of dwellings will be permitted subject to criteria including that (i) the property is in an area with a predominantly mixed-use or commercial character, and (iv) where the property is not detached, relevant nearby or adjoining properties are in multiple occupation or a non-residential use. However, the appeal property in this case is already occupied as an HMO, and there is little in the evidence before me to demonstrate that the Council had regard to this existing position which is an important material consideration. Given this context and in the absence of compelling evidence to substantiate the claim that the proposal would prejudice the character of the area or increase activity to the detriment of the amenity of nearby occupiers, I do not find that the criteria at parts (i) or (iv) of Policy H7 are a reasonable justification to refuse permission.
6. I therefore find that the Council has failed to provide sufficient evidence to substantiate its reason for refusal. In basing its case on vague and generalised assertions which have not been supported by evidence, the Council has behaved unreasonably and it has delayed development which should have been permitted. As a result, the applicant has incurred unnecessary expense in pursuing the appeal.

Conclusion

7. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Consequently, the application for a full award of costs is allowed.

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 Medway Council shall pay to Mr Rishabh Dawar the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Medway 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Bowyer

INSPECTOR