



Costs Decision

Site visit made on 26 September 2023

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2023

Costs application in relation to Appeal Ref: APP/Q1445/W/22/3310420 Oriental Hotel, 9 Oriental Place, BRIGHTON, BN1 2LJ

- 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 Ms L O'Keefe for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for a partial change of use to create events space and C3 maisonette including internal alterations.
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Decision

1. The application for costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The appellant considers that the Council has acted unreasonably by introducing new material at the appeal stage relating to Policy CP19 of the City Plan P1, failing to acknowledge the shortfall in the housing land supply, making unsubstantiated claims about harm to adjoining occupants and making an inaccurate interpretation of 'serviced accommodation'.
4. At no time did the Council suggest that the proposal would conflict with Policy CP19. The policy was provided during the appeal for the purposes of clarification in response to the appellant's appeal statement and to explain the weight given to the benefits associated with the provision of an additional dwelling. The appellant provided further comments on this matter, and these were taken into consideration in my determination of the appeal. None of this amounted to unreasonable behaviour by the Council.
5. The Council acknowledged its housing land supply position and the benefit of an additional dwelling in the officer's report. It went on to state that the harm from the loss of hotel accommodation outweighed the limited benefits of the proposal. Although the report dealt with this briefly, it was a planning judgement which the Council was entitled to make and was not unreasonable. The appeal provided the appellant with an opportunity to test that assessment and having considered the evidence of both parties, I reached the same conclusion.
6. The Council was concerned about noise and disturbance from use of the ground floor as an events space, particularly for the occupants of the lower ground floor flat. This was a matter of planning judgement, particularly as the building

is Grade II* listed and this could present constraints on the ability to install appropriate soundproofing. There was nothing unreasonable in the Council's approach to this matter. However, the appeal gave the appellant an opportunity to challenge its conclusion and having considered the points put to me, I found in the appellant's favour on this issue. In doing so, I considered the possibility of imposing conditions to mitigate potential harm and would have pursued this further, if the proposal had been acceptable in all other respects.

7. I understand the appellant's frustration about the definitions in the Use Classes Order and the dispute about what is required to provide 'serviced accommodation'. However, having considered the evidence put to me, I concluded that even with the retention of 2 guest rooms, the proposal amounted to a substantive loss of good quality accommodation for guests. This could only be justified through the provision of information that sought to address the requirements of the criteria set out in Policy CP6.6.
8. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The appellant could have chosen to use the appeal process to provide viability and other relevant information having regard to the content and requirements of Policy CP6.6. The appellant's statement satisfied me that, subject to conditions, the change of use would be compatible with surrounding uses. However, the lack of information about the viability of the business did not enable me to find in the appellant's favour in respect of criterion a) of the policy.
9. The Council acted reasonably in determining the application in accordance with the development plan. I have done the same having considered the additional points raised by the appellant in her appeal statement and her personal circumstances. However, there was nothing which justified a decision other than one in accordance with the development plan.
10. Taking all the above into account, the Council did not act unreasonably or cause the appellant to incur unnecessary expense in presenting her case through the appeal process. Consequently, an award of costs is not justified.

S M Holden

INSPECTOR