
Costs Decision

Site visit made on 13 November 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2024

Costs application in relation to Appeal Ref: APP/D1590/W/23/3316668 171 West Road, Southend-on-Sea, Essex SS0 9DH

- 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 Kudlip Virk for an award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from C3 dwelling to Sui Generis HMO (7 rooms).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the 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 applicant relies on the fact that the Council failed to determine the application within 8 weeks; that there was miscommunication between the Council's Licencing and Planning Departments; the applicant has lost income from only letting 6 out of the 7 rooms that the property is licenced for; Planning Officers recommended planning permission be granted for the proposal, but Council Members took a different course of action and refused it; and that the Planning Committee Members were advised that a refusal would not be sustainable on appeal and would expose the Council to costs if Members were to refuse the planning application.
4. It is clear that the planning application process ran beyond the 8-week deadline and that the failure of the Council to determine the application within the prescribed timeframe would have been frustrating to the applicant. However, the planning application was called-in to Committee by a Member, in accordance with the Council's scheme of delegation. An extension of time ('EOT') until 2 December 2022 was agreed by the applicant to allow the application to be heard by the planning committee. The planning application was determined on 2 December 2022 in accordance with the agreed EOT.
5. Licencing is an entirely separate legislative regime to planning and therefore, even though a licence may be granted by the Council, this does not necessarily mean that planning permission will be granted, or vice versa. While the Council's licensing department could have communicated their approval of the licence with the planning department, it is the responsibility of the applicant to ensure that all necessary permissions/consents under all applicable regulatory

regimes have been secured. While it is recognised that the applicant sought to rectify the matter by submitting a planning application, this does not guarantee that the development will be approved.

6. The proposal was for one additional room above the number permitted under Use Class C4. However, this does not negate the requirement for planning permission to be obtained. Furthermore, it is clear from the information before me that the fallback position of the development was detailed within the officer report presented to Members. It was entirely at the Members' discretion to determine what weight it would apply to the fallback position.
7. I have noted the recommendation of the Council's officers. However, the decision in respect of this issue is one that is a matter of judgement. Council Members, in this case, were entitled not to accept the professional advice of its officers so long as a case could be made for the contrary view. I appreciate that the planning committee's decision will have been a disappointment to the applicant, however, Council Members arrived at a different conclusion than their officers, which is not a basis for unreasonable behaviour. Therefore, the appeal could not have been avoided. While, following consideration of the appeal on its own merits, I have not concurred with Council Members, this does not amount to unreasonable behaviour.
8. The applicant may have had a reduced income from only letting 6 out of the 7 rooms within the property. However, the applicant purchased the property without the necessary planning permission in place. Furthermore, I have no substantive evidence that this resulted in the applicant incurring any unnecessary or wasted expense in the appeal process.
9. The officer forewarning Committee Members about the potential for an appeal and the cost implications should Members decide to refuse the planning application are given in the public interest and does not amount to unreasonable behaviour.

Conclusion

10. I therefore find that unreasonable behaviour by the local planning authority, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated.

A Berry

INSPECTOR