



Costs Decision

Site visit made on 4 January 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2024

Costs application in relation to Appeal Ref: APP/U2235/W/23/3325028 14 Charles Street, Maidstone, Kent ME16 8ET

- 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 Kemsley for a full award of costs against Maidstone Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from Class C4 6 bedroom HMO to sui-generis 8 bedroom HMO to include erection of a single storey rear extension and loft conversion with the erection of 1no. rear dormer and 1no. front rooflight.
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Decision

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

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 claim is based on the fact that the planning application was refused by Planning Committee Members, contrary to the recommendation of professional officers. The appellant considers the refusal reason has no foundation and the change from the original view of the officer that the development was policy compliant to being perceived by the Committee Members to conflict with planning policy amounts to unreasonable behaviour.
4. It is a well-established and fundamental principle that Planning Committee Members are not bound by the advice of their officers and are entirely within their rights to exercise judgement and maintain objections where they have a legitimate basis from the evidence and information available to them. The fact that Planning Committee Members may have a different view to their professional officers and the appellant does not in itself constitute unreasonable behaviour.
5. Nevertheless, the PPG states that local planning authorities (LPA) are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The PPG goes on to provide examples of unreasonable behaviour by LPAs. Such examples include not determining similar cases in a consistent manner or failure to produce evidence to substantiate a reason for refusal.

6. Although each case is assessed in its own merits, the planning history for the appeal site is a relevant consideration when assessing a proposal. This appeal follows a previous planning application for the change of use from use Class C4 6-bedroom HMO to sui-generis 9-bedroom HMO and associated extensions, which was refused in October 2022. The reason for refusal relates to the visual impact of the front roof extension and does not mention parking arrangements or neighbourhood amenity.
7. The current scheme relates to an 8-bedroom HMO, so the number of bedrooms has been reduced from the previous application. As the Council normally applies a standard of one off-street parking space per room, it is reasonable to conclude that the number of parking spaces associated with the current proposal would be less than in the previous scheme.
8. There is limited evidence before me to demonstrate how the Council reasoned that this appeal proposal, for less bedrooms, would cause harm to highway safety and to neighbourhood amenity when the previous application was not refused on these grounds. In fact, the Council has not provided compelling evidence to demonstrate that the parking pressure has materially increased during the period between both applications. As such, the Council has failed to reasonably substantiate or justify its reason for refusal.
9. The scheme before me does not include a front roof extension and the Council did not raise any objections to the proposed design. As such, it is reasonable to conclude that the Council's objection to the previous planning application has been resolved.
10. For the reasons set out above, it is apparent that, overall, the Council failed to adequately consider or assess the planning application and it failed to substantiate the reason for refusal. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

11. 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 Maidstone Borough Council shall pay to Mr Kemsley, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Maidstone Borough 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.

P Terceiro

INSPECTOR