

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: 23 February 2024

Costs application in relation to Appeal Ref: APP/U2235/W/23/3328494 7 Upper Fant Road, Maidstone, Kent ME16 8BP

- 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 Personal Properties Limited 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 6-person HMO (Use Class C4) to 11-person HMO (Sui-Generis).
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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 (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. In this case, the applicant's costs application is based upon the claim that the Council has not been consistent in its decision making and was also unreasonable in its stance in relation to the lower ground floor bedroom, particularly as no site visit was undertaken.
3. The appellant sets out several other applications related to HMOs granted by the Council. On the evidence before me, most of these relate to sites at some distance from the appeal site, and I have not been provided with substantial evidence to demonstrate that the parking circumstances on these roads would be similar to those experienced in Upper Fant Road. As such, these cases would not be directly comparable with the appeal site, and so no legitimate criticism of inconsistency can be levelled at the Council.
4. Notwithstanding the above, reference is made to two addresses in the Fant area. The Council sets out that the reason for refusal arises from the cumulative impact of the proposal and these developments and justifies its position based on local circumstances. The reason for refusal explicitly uses the word 'cumulative'. Although I may have reached a different conclusion to the Council on this matter, it is true that each case must be assessed on its own merits, and the reasoning provided by the Council was adequate in this case.
5. As such, the Council has not acted unreasonably when arriving at a different conclusion in relation to the appeal site. The Council does not need to pursue an Article 4 direction to justify its position. Also, regardless of the extent of HMO use in the property up to this point, the Council cannot be fairly criticised

for assessing the scheme on the basis of the given description of development and the submitted plans.

6. In terms of refuse storage, such details could have been secured by planning condition. However, this was not the only area of concern for the Council. As such, even if this matter did not form part of the reason for refusal, it is unlikely that the appeal would have been avoided.
7. Much of the applicant's case in terms of the bedroom rehearses the planning merits of the dispute. Despite no Council representative undertaking a site visit, I ultimately agree with the Council that the bedroom did not provide an acceptable standard of living accommodation. The issue is squarely within the realms of planning judgment, must be based on site specific circumstances, and has an inherent and unavoidable degree of subjectivity. The Council's written evidence on this matter was adequately substantiated.
8. I appreciate that the applicant does not agree with the Council's assessment. However, it does not follow that the Council's case is flawed. In these circumstances the fundamental differences between the parties could not have been resolved other than by an appeal. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

P Terceiro

INSPECTOR