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## Costs Decisions

Site visit made on 13 August 2024

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 August 2024**

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### **Costs application A in relation to Appeal Ref: APP/D1780/C/23/3314612 18 Sirdar Road, Southampton, SO17 3SJ**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Southampton City Council for a partial award of costs against Denzil Properties (M) Ltd.
- The appeal was against an enforcement notice alleging material change of use to 2 self contained flats.

### **Costs application B in relation to Appeal Ref: APP/D1780/C/23/3314612 18 Sirdar Road, Southampton, SO17 3SJ**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Denzil Properties (M) Ltd for a partial award of costs against Southampton City Council.
  - The appeal was against an enforcement notice alleging material change of use to 2 self contained flats.
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## **Decisions**

### **Application A made by Southampton City Council**

1. The application for a partial award of costs is refused.

### **Application B made by Denzil Properties (M) Ltd**

2. The application for a partial award of costs is allowed in the terms set out below.

## **Reasons**

3. 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.

### **Application A – The Council's Costs Claim**

4. The Council argue that ground (f) was appealed but not substantiated and that it was unreasonable to wait until the appeal was made to provide evidence for the ground (d) appeal. The appellants should have discussed this with the council before making their appeal.
5. No rebuttal has been provided by the appellant and I have not considered it necessary to specifically request one. The ground (f) was made on the basis that it was uncertain, from the notice, that the previous use of the property was. If the notice was upheld the appellant wanted it made clear the previous

use was as an HMO for 6 persons, not a single dwellinghouse. This was important because an Article 4 direction prevented the conversion of a single dwellinghouse into an HMO without planning permission. The HMO conversion took place before the Article 4 direction so planning permission was not needed. The ground (f) was therefore a request for me to amend the requirements to (I assume) include one to return the use to an HMO to avoid any doubts. The ground (f) was, therefore, substantiated.

6. On the ground (d) appeal, it is perfectly reasonable to provide evidence of occupation for more than 4 years under ground (d). Indeed that is what ground (d) is for and it happens in hundreds of similar appeals across the country. There is no requirement on the appellant to discuss this separately with the Council, especially once the enforcement notice has been issued and the clock is ticking for making an appeal. Nor is there a requirement to apply for an LDC separate to the ground (d) process. There has been no unreasonable behaviour on the part of the appellant and a costs award is not warranted.

### **Application B – The Appellant’s Costs Claim**

7. The appellant made a claim for costs on 2 grounds. The first was only if PINS accepted the late introduction of evidence from the Council concerning space standards. No decision was made on this before the site visit. As I have not needed to deal with the Ground (a) appeal this becomes a non-issue and I note that no further evidence was provided by the appellant so no costs were incurred.
8. The second and more substantive application concerned one of the reasons for the issue of the notice which was incorrect. The Council responded that they accepted this was an error in their statement, but the reasons should be read as a whole.
9. There were three reasons for issuing the notice, residential amenity, parking and lack of s106 agreements. The first reason is the relevant one. This stated: *“the unauthorised development fails to provide a high quality living environment for future residents, in particular with regards to the poor outlook and light serving the bedroom of the ground floor family unit and noise and disturbance arising from other occupiers using the rear amenity space”*. This was lifted from a previous planning application refusal for a rear extension and conversion to 2 flats. That application did provide for a bedroom with limited outlook onto the side passage, but the rear extension was never built and such a bedroom does not exist in the property as it stands now, and as it stood when the notice was issued. The ground floor bedrooms I saw are both in the rear of the property and have windows opening onto the rear garden.
10. The Council accepted this was an error on their part and the appellant clearly spent some time and effort in his statement to explain this. Had the error not been made that work would not have been necessary. It is clearly unreasonable behaviour to include an incorrect reason for issuing the notice.
11. The Council’s counter argument that if the reason was read as a whole the inadequate living environment issue was still relevant missed the point that a specific reason was outlook from a bedroom window which was both incorrect and did cause unnecessary work for the appellant to rebut.

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

**Costs Order**

13. 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 Southampton City Council shall pay to Denzil Properties (M) Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in rebutting the specific claim in the first reason for issuing the notice that "*the unauthorised development fails to provide a high quality living environment for future residents, in particular with regards to the poor outlook and light serving the bedroom of the ground floor family unit*"; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Southampton City Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Simon Hand*

INSPECTOR