



Costs Decision

Site visit made on 27 February 2026

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th March 2026

Costs application in relation to Appeal Ref: APP/D1590/W/25/3376924

47 Old Southend Road, Southend-on-Sea SS1 2HA

- 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 Mark Oliver of Oliver Assets LLC for a full award of costs against Southend-on-Sea City Council.
 - The appeal was against the refusal of planning permission for the change the use of a 7-bed sui generis HMO to an 8-bed sui generis HMO and the provision of cycle and refuse storage on site. Facilitated by chimney removal, erection of a flat roof rear dormer, alterations to the flank elevation fenestration and the demolition of the existing rear lean to and the erection of a single storey rear extension.
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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. I have concluded in my main decision that the proposed internal alterations to existing bedrooms 2 and 4 in the existing HMO, to create proposed bedrooms 2 and 5 in the proposed HMO, would not change the outlook from those bedroom windows, nor would they reduce natural light reaching them.
4. The main parties agree that the existing HMO is a fallback position or baseline from which to assess the appeal scheme. In granting it planning permission only a few years ago, it is reasonable to deduce that the Council found that it provided satisfactory living conditions for occupants of existing bedrooms 2 and 4, with particular regard to outlook and light reaching those rooms.
5. In the intervening years since the grant of that planning permission, there is nothing of substance to indicate that the outdoor environment at the appeal site has changed in any way that would materially affect the outlook from bedrooms 2 and 4 or light reaching those rooms. Consequently, the Council's conclusion that the outlook from proposed bedrooms 2 and 5 in the appeal scheme, and light reaching those rooms, would provide occupants with unacceptable living conditions is inconsistent with its earlier grant of planning permission for the existing HMO.
6. Whilst the Council states that it gave due weight to the existing HMO as a fallback scheme, there is nothing of substance before me to demonstrate that the Council undertook a proper comparison between the appeal scheme and the existing

- conditions in bedrooms 2 and 4, when analysing outlook and access to light to bedrooms 2 and 5, and the evidence indicates that it considered the matter afresh.
7. Therefore, in refusing planning permission on the grounds of outlook from proposed bedrooms 2 and 5, and access to light in those bedrooms, the Council failed to have proper regard to the existing HMO, as a material consideration of significant weight, and its refusal on those grounds was inconsistent with its earlier grant of planning permission for that HMO. This amounts to unreasonable behaviour in the terms expressed by the PPG and it has put the applicant to wasted expense in challenging the refusal of planning permission on those grounds through the appeal process, including the submission of an unnecessary technical assessment of daylight levels within those bedrooms.
 8. If the Council had properly assessed the proposal against the existing HMO, then in all probability it should reasonably have found no harm to the living conditions of future occupants in respect of their outlook from proposed bedrooms 2 and 5, and access to light. It follows that it should have found no harm to be compounded by the absence of a communal living room to provide those occupants with respite space.
 9. I have not been referred to any policy or guidance that sets criteria for the relationship between a shower room and the bedroom it would serve. Therefore, it is a matter of judgement as to whether the relationship between the proposed shower room and bedroom 3 would be harmful to a future occupant's living conditions. Whilst I have reached a different conclusion to the Council in respect of that disputed matter, its judgement was adequately reasoned and did not amount to unreasonable behaviour at the point at which planning permission was refused. Therefore, the Council did not delay a development which should clearly have been permitted.
 10. In its appeal statement the appellant made the Council aware of appeal decisions in its area for HMO developments at Number 52 Honiton Road¹ and Number 11 Honiton Road², which are relevant material considerations to the dispute in this appeal over the location of the proposed first floor shower room. The appellant provided those decisions with their appeal and included extracts from them in its statement of case.
 11. At the point at which planning permission was refused, the Council could not reasonably have had regard to those appeal decisions. One did not exist and the other was not put before it. However, at the point of submitting its appeal statement the Council had both appeal decisions and was therefore obliged to take them into consideration as part of the sensible ongoing case management advocated by the PPG.
 12. Had the Council properly reviewed its case in light of the relationship between the shower room and bedroom in the appeal decision at Number 11, there is a very high probability that it would have been aware that its objection to the location of the shower room relative to proposed bedroom 3 was inconsistent with that appeal decision and it would likely have changed its stance on it. This is because the Inspector in that appeal found the relationship and distance between a first floor bedroom and a ground floor shower room to be acceptable. Therefore, it is highly

¹ APP/D1590/W/25/3373130

² APP/D1590/W/25/3370348

likely that the distance between them would have been far greater and less convenient for its occupant than the relationship between proposed bedroom 3 and the shower room in the appeal before me.

13. Given the apparent similarities between them, the Council should have had proper regard to the relevance of the appeal decision at Number 11 to its case and there is nothing in its evidence to show that it did. It was not sufficient in that instance, particularly as the appellant had already made it aware of the similarities, to rely on a broadly framed statement that all appeal schemes are considered on individual merit and that it is not obliged to reach the same outcome as the Inspector. However, whilst this amounts to unreasonable behaviour in the terms expressed by the PPG, the applicant's final comments make no obvious reference to the relationship between bedroom 3 and the first floor bathroom. Therefore, the Council's unreasonable behaviour in that regard has not resulted in any demonstrable wasted expense during the appeal process.
14. In taking account of all the above and for the reasons I have given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the appellant having to address the outlook from proposed bedrooms 2 and 5, and the light reaching them, and a partial award of costs is therefore warranted.

Costs Order

15. 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 Southend-on-Sea City Council shall pay to Mr Mark Oliver of Oliver Assets LLC the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the outlook from proposed bedrooms 2 and 5, and light reaching them; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Southend-on-Sea City to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G Sylvester

INSPECTOR