The Planning Inspectorate

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Your Ref:

Our Ref:
(1) APP/Z2260/W/16/3142509
(2) APP/Z2260/C/16/3142650

Date: 19 July 2017

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78, 174 AND 322
LAND AT 14 WYNDHAM AVENUE, MARGATE
APPEALS BY MR OLEKSIY GORDIYCHUK
APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's decision dated 24 October 2016 regarding the above appeals. They were against Thanet District Council's decisions in respect of:

(1) the refusal, dated 22 October 2015, of planning permission (retrospective – ref: F/TH/15/0600) for change of use and conversion of dwelling into a house of multiple occupation (C4)

(2) the issue of an enforcement notice dated 15 January 2016 alleging a breach of planning control by, without planning permission, the material change of use of the dwelling house to a house in multiple occupation

concerning land described above.

2. With apology for delay[1] this letter deals with the appellant's application for a full award of costs against the Council as made in written correspondence dated 13 April 2016 and 12 April 2017. The Council replied on 4 April 2017. The parties' costs submissions, which have been cross-copied, have been carefully considered.

Summary of the decision

3. The costs application succeeds and a full award of costs is being made. The formal decision and costs order are set out in paragraphs 15 and 16 below.

[1] The Inspectorate's procedural letter of 29 March 2017 explained the circumstances in which the Secretary of State had decided to deal with the costs application following the issue of the Planning Inspector's decision on the appeal.

Basis for determining the costs application

4. In planning and enforcement notice appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party in proceedings which do not give rise to a local inquiry where it is found that one of the parties to the appeal(s) has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of current Government guidance on awards of appeal costs (as published on the Gov.uk website under "Appeals"), the Planning Inspector's decision on the appeals, the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for decision

7. All the available evidence has been carefully considered. Particular regard has been paid to paragraphs 049 of the costs policy guidance. The decisive issue is whether or not the Council acted unreasonably, causing the appellant to incur unnecessary appeal expense, by (1) failing to produce evidence on appeal to substantiate their reasons for refusing planning permission and whether or not the Council made vague or generalised assertions about the impact of the proposal unsupported by any objective analysis; and (2) considering it expedient to issue the enforcement notice.

8. It is noted that the planning application was presented to the Planning Committee with a recommendation for approval (subject to conditions). The Council's appeal statement records that the Planning Officer considered that the development would not result in an intensification or concentration (HMO use) detrimental to the amenity and character of the neighbourhood or harm to highway safety and the scheme would provide an adequate standard of accommodation for future occupiers. However, Committee Members did not accept the officer's recommendation to grant planning permission. The Committee considered that the location and intensified use of the building resulted in noise, disturbance and visual impact detrimental to the character and amenity of the locality, and that the number of occupants and lack of off-street parking provision had increased the demand for on-street parking to the inconvenience of local residents and causing harm to the residential amenity of the area.

9. In support of the costs application the appellant contended that there was no evidence that the use of the property as a HMO had resulted in any degree of noise, disturbance and visual impact to the detriment to the character and amenity of the locality. And the grounds of appeal mentioned that no complaints had been received since 1st October 2014 and that letters in support of the development had been submitted by occupiers of one of the immediately adjacent properties. The appellant also pointed out that the historic use of the property was, for many years, in an intensive form of residential accommodation as five flats (each occupied at one time or another by two persons producing a theoretical capacity of ten persons – just one less than the current occupancy). And, in the event of noise and disturbance issues the appellant pointed out that the Planning Officer's report stated that, as with any other property, this could be dealt with under environmental health legislation via noise complaints procedures. As regards the second reason for refusal Planning Officers had concluded that there was no evidence to support a highway ground. Kent Highway Services had stated that, bearing in mind the existing parking situation, any increase in demand for on-street parking was unlikely to create highway issues. The appellant also stated that, notwithstanding the absence of any evidence of highway related harm, he had undertaken a survey to establish whether the roads in the local area were at capacity such that there were

no available parking spaces – the survey results showed that at no time was the area at capacity.

10. In granting planning permission on appeal the Planning Inspector concluded that the development did not adversely affect the living conditions of adjacent residents and did not conflict with Policies H11 and D1 in the Thanet Local Plan 2006. In terms of parking he also concluded that the development did not have a material effect on the living conditions of residents. He observed that the development was in a highly sustainable location and did not exacerbate parking pressures to any appreciable degree.

Conclusions

11. Committee Members are not bound to accept the recommendations of their professional officers but if their advice is not followed a local planning authority will need to show reasonable planning grounds for taking a contrary decision and provide relevant evidence on appeal to support the decision in all respects.

12. Having considered the available information the Secretary of State concludes that the Council have failed to show, with reference to cogent evidence, that they had reasonable grounds for taking a contrary decision to the professional officers and in deciding to refuse planning permission for the stated reasons. The Council have not countered the evidence put forward in support of the appeal other than in terms of expressing generalised assertions about the impact of the proposed development. In short, the Council have not provided realistic and specific evidence to show clearly why the development could not be permitted. It follows that it should also not have been necessary for the Council to issue the related enforcement notice.

13. In the circumstances described the Secretary of State concludes that, within the scope of the costs policy guidance, the Council acted unreasonably with the result that the appellant incurred unnecessary expense in submitting and pursuing the planning appeal and related enforcement notice appeal. A full award of costs is therefore considered justified in the particular circumstances.

14. For the avoidance of doubt, the Secretary of State does not decide the amount of costs payable. This is for the parties' agreement or via an application for a detailed assessment in the Senior Courts Costs Office.

FORMAL DECISION

15. For these reasons, it is concluded that a full award of costs against the Council, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

16. Accordingly, the Secretary of State for Communities and Local Government in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78, 174 and 322 of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that Thanet District Council shall pay to Mr Oleksiy Gordiychuk his costs of the appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned the appeals more particularly described in paragraph 1 above.

17. You are now invited, on behalf of the appellant, to submit to Helen Johnson (Neighbourhood Planning Officer) at Thanet District Council details of those costs with a view to reaching agreement on the amount. A copy of this decision letter has been sent to her.

Yours faithfully

John Gardner

JOHN GARDNER
Authorised by the Secretary of State
to sign in that behalf