

Costs Decision

Site visit made on 4 January 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 February 2017

Costs application in relation to Appeal Ref: APP/Z1775/W/16/3159492 Anstey Hotel, 116-118 Clarendon Road, St Jude, Southsea PO4 0SE

- 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 JDI Developments Ltd for a full award of costs against Portsmouth City Council
 - The appeal was against the refusal of planning permission for 'proposed change of use from Hotel (Class C1) to house in multiple occupancy (Sui Generis) (HMO)'.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. Planning Practice Guidance (PPG) paragraph 030 advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.¹
3. It is suggested that the Council in refusing the appeal application failed to take into account the opinion of its officers, a recent costs decision² and the policies of its Development Plan and the National Planning Policy Framework (the Framework). I will deal with each in turn.
4. Paragraph 049 of the PPG sets out examples of behaviour that could result in an award of costs against a local planning authority, one of which is giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The Council, in determining the appeal application, took a view contrary to that of its officers. In doing so Members of the Council attached different weight to the planning merits of the appeal application. Members of the Council are not obliged to accept the recommendations of its officers, provided that it can show reasonable grounds for doing so, supported by relevant evidence at appeal.
5. In its statement the Council provides further explanation of its reasons for opposing the appeal application. However, it advances limited objective analysis to support its view that the character or appearance of the Conservation Area would be adversely affected by the proposed use of the appeal property, as opposed to the behaviour of future occupiers. In the same way, it provides limited objective evidence to substantiate its objection based

¹ ID 16-030-20140306

² APP/Z1775/W/16/3145065

on the effect of the proposed use on the living conditions of neighbouring occupiers, with regard to noise and disturbance. For this reason, I consider that the Council acted unreasonably and that unreasonable behaviour resulted in the appellant incurring unnecessary expense in appealing that decision.

6. I have no substantive evidence before me to demonstrate that the Council failed to take into account a recent appeal decision and costs decision. In any event, that appeal differed from the appeal before me, in as much as it dealt with a property in use as a nursing home, was for a different development, and that decision turned on the effect on the Conservation Area and on-street parking.
7. I note, in the Council's statement, it brings to my attention those paragraphs in the Framework that it considers most relevant. In addition, it acknowledges Development Plan policy in its reasons for refusal. In this regard, I have limited evidence to demonstrate that the Council failed to take account of those matters in making its decision. In this regard, I consider that it acted reasonably.

Conclusion

8. However, overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and an award of costs is justified.

Costs Order

9. 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 Portsmouth City Council shall pay JDI Developments Ltd the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Portsmouth City 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R Barrett

INSPECTOR