

Costs Decision

Site visit made on 17 January 2017

by Jameson Bridgwater PGDipTP MRTPI

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

Decision date: 27 February 2017

**Costs application in relation to Appeal Ref: APP/Z1775/W/16/3159993
80 Margate Road, Southsea PO5 1EZ**

- 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 James Oliver for a full award of costs against Portsmouth City Council.
 - The appeal was against the refusal of planning permission described as 'change of use from C4/C3 dual use to Sui Generis'.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. National Planning Practice Guidance (the Guidance) advises that, costs may only 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 appeals process.
 3. Authorities are expected to produce evidence to substantiate each reason for refusal with reference to the development plan and all other material considerations, showing clearly why the development cannot be permitted.
 4. The planning committee refused the application contrary to the advice of their professional officers. The minutes of the planning committee record that officers provided clear guidance in relation to any effect of the proposal on the level of accommodation (room sizes and communal space). Moreover, it was confirmed to the committee that room sizes and communal space were in accordance with the Council's HMO licensing standards. The Council have stated that their decision was 'subjective and founded on the opinion of the planning committee members'. Consequently, in the absence of any substantive evidence in relation to level of accommodation (room sizes and communal space), the Council's decision relies upon vague and generalised assertions about the proposal's impact, which are unsupported by any objective analysis.
 5. Additionally, the minutes of the planning committee plainly demonstrate that when making their decision the committee were fully aware that the appeal property was already operating as a HMO and that the effect of the proposal would not materially impact on the balance of HMO's in the area. Notwithstanding this, the committee refused that application in the full knowledge that the proposal was fully compliant with Policy PCS20 of The
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Portsmouth Plan; the policy they relied upon to refuse the application. Therefore the Council have prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

6. Authorities are not bound to accept the recommendations of their officers, but if their professional or technical advice is not followed, then reasonable planning grounds for taking a contrary decision need to be provided and supported by relevant evidence.
7. Whilst it is accepted the planning committee debated the application at length, there is nothing before me that adequately substantiates the reason for refusal or makes it clear why the development should not be permitted. For these reasons I find the Council behaved unreasonably in refusing permission. The applicant's costs in mounting this appeal were therefore unnecessarily incurred and an award of costs is therefore justified.

Costs Order

8. 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 to Mr James Oliver, the costs of the appeal proceedings described in the heading of this decision.
9. 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.

Jameson Bridgwater

INSPECTOR