

Costs Decision

Site visit made on 2 May 2017

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 22nd June 2017

Costs application in relation to Appeal Ref: APP/Z1775/W/16/3165136 24 Merton Road, Southsea, Portsmouth PO5 2AQ

- 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 Ranveer Singh for a full award of costs against Portsmouth City Council.
 - The appeal was against the refusal of planning permission for a change of use from C3 to Sui Generis to support student accommodation with refuse and cycle storage and landscaping.
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Decision and Costs Order

1. 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 Ranveer Singh, the costs of the appeal proceedings described in the heading of this decision, limited to all the costs incurred in the appeal with the exception of those incurred in respect of reason for refusal 3 relating to the waste storage area; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. 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.

Reasons

3. The Planning Practice Guidance 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.
 4. The Guidance gives examples of the type of behaviour which may give rise to a substantive award of costs against a local planning authority, and these include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 5. Other examples given include a failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 6. The application was recommended by officers for approval. Members are entitled not to follow the recommendation of their professional officers.
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However, such decisions must be based on proper planning grounds, supported by evidence. In respect of the use proposed, the Council's evidence did not show how the proposal would create an "imbalance" so as to conflict with Policy PCS23 of the Portsmouth Plan, not did it show good planning reasons such as to amount to material planning considerations to justify not determining the proposal in accordance with the policy. I recognise that Local Members and residents may well be in the best position to know of the likely impacts of an imbalance of HMOs, but the Council's case lacked specific facts to support the allegation of harm and was not buttressed by an objective analysis. I consider that this is unreasonable.

7. No facts were put forward to show how the proposed use would result in harm to the character or appearance of the conservation area. Again, this was a vague assertion unsupported by evidence or objective analysis. Similarly, the allegation that the infilling of the lightwell would be harmful to heritage interests was also unsupported by relevant evidence. No explanation was provided as to the contribution that lightwells make to the character or appearance of the area, and in particular, the unusual size of the lightwell in this case was ignored. I find that the concern was unsupported by substantive evidence and this too amounts to unreasonable behaviour.
8. Turning to parking, the Council failed to have regard to the findings of the previous Inspector, who found that there would be unlikely to be a material change in the demand for car parking in the surrounding area, from use of the neighbouring property as an HMO, having regard to the intense pressure that already exists and the good accessibility to services and public transport. The Highway Authority had no objection and in these circumstances it was incumbent on the Council to adduce clear evidence that material harm would arise. The failure to do so amounts to unreasonable behaviour.
9. In respect of the concerns about bin storage in relation to neighbours' living conditions, I accept that this was a matter of judgement, and that, although I did not agree, it was arguable as to whether the closeness of the bins would result in unacceptable smell. I therefore consider that the Council's concern on this point did not amount to unreasonable behaviour.

Conclusion

10. With the exception of the reason for refusal in respect of waste storage, I find that unreasonable behaviour within the meaning of the Guidance has been demonstrated and that the appellant was put to unnecessary costs in bringing the appeal. A partial award of costs is therefore justified.

JP Roberts

INSPECTOR