
Costs Decision

Site visit made on 1 November 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 06 December 2017

Costs application in relation to Appeal Ref: APP/Z1775/W/17/3179404 22 Jessie Road, Southsea PO4 0EN

- 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 Anthony Lane for a full award of costs against Portsmouth City Council.
 - The appeal was against the refusal of planning permission for the change of use from purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a 7 bedroom 7 person sui generis house in multiple occupation.
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Decision

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

Reasons

2. 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. The PPG states that local planning authorities are at risk of an award of costs with respect to the substance of the matter at appeal if they have unreasonably refused applications or defended appeals. Examples of this include failure to produce evidence to substantiate each reason for refusal on appeal use vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The Council's decision related to the quality of living environment within the proposed House in Multiple Occupation. This is clearly a material planning consideration and Portsmouth Plan¹ Policy PCS23 requires a good standard of living environment. In judging this key matter the Council has very heavily relied upon the advice of its Private Sector Housing team (PSH). At the time of the decision, no set of adopted standards as guidance to inform the decision has been referred to by them other than the Technical housing standards – nationally described space standards. These do not relate directly to Houses in Multiple Occupation and can only be given limited as I have in my appeal decision. Subsequently the Council has partially adopted its Houses in Multiple Occupation – Ensuring Mixed and Balanced Communities Supplementary Planning Document which adds some additional weight to the Council's concerns regarding room sizes. However this did not affect the original

¹ The Portsmouth Plan (Portsmouth's Core Strategy), adopted 24 January 2012

decision to refuse planning permission. It was not adopted until very late in the appeal process.

5. In reaching my decision I have used my judgement of the standard of accommodation which I consider is critical to cases such as this. Within the e-mail the PSH officer indicated that it was a possibility that the "common area" (the open plan kitchen and lounge) could be acceptable for 7 people but subject to carrying out an inspection. With respect to the concerns over the second bathroom size, it was also indicated that clarification could be provided following a site visit.
6. Whilst the Council's planning officer has also visited the site, given the degree of influence that the PSH officer has had in this case, it is very unfortunate that a site visit was not made by that officer. The quality of a living environment is not solely about floor space as I have made clear within my appeal decision. It is not clear why a visit was not undertaken particularly given that the PSH officer had offered to do so on 11 May 2017 in an e-mail, over a month prior to the Council's Planning Committee. A site visit may have prevented a refusal of planning permission. Alternatively a visit may well have confirmed the concerns of the planning officer and the PSH officer, allowing further evidence to be presented substantiating the Council's case. I found the Council's case unconvincing particularly when I saw the inside of the property for myself and therefore consider that the refusal was vague and generalised, contrary to PPG advice. In this respect, the Council has acted unreasonably.
7. I have been referred to a number of other appeal decisions but have very little information about any of them to judge the consistency of the Council's approach in this case with others. These other cases have not had a decisive influence over my appeal decision or this costs decision.
8. The unreasonable behaviour by the Council has resulted in an appeal that may not have been necessary otherwise. The appellant has employed a planning consultant to prepare his case and I was met at the site by his letting agent. Fees have been incurred. The PPG makes it clear that a costs awards cannot extend to compensation for indirect losses such as those resulting from the delay and the costs would not extend to the loss of income due to the delay in having an additional letting room.
9. In conclusion, an award of costs is justified.

Costs Order

10. 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 Anthony Lane, the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

A Harwood

INSPECTOR