
Costs Decision

Site visit made on 20 July 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 04 August 2020

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3247887 32 Montgomerie Road, Southsea PO5 1ED

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

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance¹ (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application was made in writing and although not expressly stated by the applicant, it is clear from the information before me that a claim for a full award of costs is being made.
4. The applicant alleges that the Council was unreasonable in refusing a development that clearly should be permitted; failed to produce evidence to substantiate its reason for refusal; and, owing to its similarities to other development which an Inspector has previously indicated to be acceptable, persisted in delaying the scheme.
5. The Council's response was made in writing, confirming the three principle challenges.
6. The planning application, which was submitted in January 2019, was due to be determined by the Council by 12 March 2019. However, owing to the number of objections to the proposal it had to be determined by the Planning Committee.
7. While awaiting determination by the Planning Committee in May 2019 the evidence indicates that the issue of nutrients in the Solent became more critical. The evidence also indicates that on 24 April 2019 the Council became aware of Natural England's guidance that any residential development in the

¹ <https://www.gov.uk/guidance/appeals>

city would result in a significant effect on the Solent Special Protection Areas (SPAs) and should not be permitted until a scheme was in place to mitigate against the effect.

8. I recognise that the applicant made changes to the property following the refusal of an earlier planning application² for development at the site. However, the Council adopted an updated Houses in Multiple Occupation Supplementary Planning Document³ (HMO SPD), requiring an increase in communal living space, in the period between the submission of the planning application in January 2019 and, in regard to the SPAs, Natural England's acceptance of the Council's Interim Nutrient Neutral Mitigation Strategy on 29 January 2020.
9. Following Natural England's acceptance of the Council's mitigation strategy the planning application was presented to the Planning Committee on 19 February 2020. The Planning Committee were entitled to go against the officer recommendation, which was one of approval of planning permission. This in itself does not amount to unreasonable behaviour, so long as it is clearly demonstrated on planning grounds why the proposed development would be unacceptable and there is evidence to support the reasons for refusal of planning permission.
10. In this regard, the minutes of the Planning Committee meeting state, amongst other things, that "*the over provision of bedroom space does not mitigate the shortfall in combined living space. Members also felt that this was very small and inadequate accommodation for the proposed number of occupants*". It is clear from the minutes of the meeting that the appeal proposal was considered against the guidance contained within the October 2019 HMO SPD, which is also referred to in the Council's decision notice. I have also found that the proposal would not be acceptable in terms of communal living space provision and I am satisfied that in this regard the Council has substantiated its concerns about the effect of the proposed development.
11. However, regarding the second floor front bedroom the Council has not provided any objective evidence why the proposal would "*fail to provide a good standard of living accommodation for the occupiers*" as indicated on its decision notice. Whilst, to some extent, the Council's actions have resulted in some additional effort on the part of the applicant, in reality the applicant's case in regard to the main issue has not changed significantly during the appeal process. I am not persuaded that the applicant has provided me with a compelling argument to demonstrate that any additional expenses incurred as a result of the Council's actions has been anything more than *de minimis*.
12. I note the applicant's point that other *Sui Generis* Houses in Multiple Occupation schemes have been allowed at appeal or approved by the Council. However, whilst I do not doubt the applicant's assertion that these other schemes have similarities to the appeal proposal, I have not been presented with any evidence to indicate that the Council, having regard to the updated October 2019 version of the HMO SPD, has been inconsistent in its determination of like cases.

² Reference: 18/01609/FUL

³ Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD), October 2019

13. Reference has been made about some of the comments from committee members during the Planning Committee meeting. However, this is an issue which needs to be taken up separately with the Council in accordance with its official complaint procedures. It would not be appropriate for me to comment any further on such matters.
14. For the reasons outlined above, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andrew Bremford

INSPECTOR