
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: 05 August 2020

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3248561 7 Beatrice Road, Southsea PO4 0JY

- 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 Chris Olive for a full award of costs against Portsmouth City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use from C4 Use (house in multiple occupation) for 6 persons to a seven bedroom, seven person house in multiple occupation (Sui Generis).
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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 has behaved unreasonably in preventing or delaying development which should clearly be permitted; failed to produce evidence to substantiate its intended reason for refusal; not considered similar cases in a fair and consistent manner; 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 four principle challenges.
6. Notwithstanding the comments about an earlier planning application² for development at the site which is not the subject of this appeal, the evidence indicates that the applicant was made aware, prior to the target 8-week determination date, that the planning application the subject of this appeal would not be going to the Planning Committee in May 2019. Furthermore, the reason for this was explained to the applicant. Specifically, that the Council

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

² Reference: 18/01830/FUL

- were unable to issue a decision on the application at that time due to the issue of nutrients in the Solent and the view that it could not reach a robust conclusion that further development of this type would not result in a likely significant effect on the Solent Special Protection Areas (SPAs).
7. It is acknowledged that 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 April 2019 and, in regard to the SPAs, Natural England's acceptance of the Council's Interim Nutrient Neutral Mitigation Strategy on 29 January 2020. However, following Natural England's acceptance of the Council's mitigation strategy, the evidence indicates that the Council informed the applicant that having regard to the guidance contained within the updated HMO SPD, it intended to refuse the planning application due to the under provision of communal space. The Council clearly refer to the current (October 2019) HMO SPD in its email, dated 3 March 2020, to the applicant. It also seems clear to me, in coming to its decision to refuse the application, that the Council had regard to the information submitted by the applicant in support of the application which included the submitted floor plans and details about room sizes.
 8. I am satisfied that the Council demonstrated the necessary interpretation and application of the HMO SPD and had regard to the specific material consideration relevant to the application, namely the under provision of communal living space. I have found the proposal to be unacceptable for the same reason. The Council informed the applicant that the decision would be issued by 20 March 2020, however the applicant lodged the appeal on grounds of non-determination of the planning application on 9 March 2020.
 9. The applicant has also referred to other Councils HMO guidance which require different sizes of communal space for similar HMO proposals. However, Portsmouth City Council has adopted its own HMO guidance based on its own local plan and community needs. Therefore, the appeal is required to be determined in accordance with Portsmouth City Council's adopted HMO SPD which, amongst other things, indicates a combined living space for 6 or more persons is required to be at least 34 m².
 10. I have been presented with a list of *Sui Generis* Houses in Multiple Occupation schemes either 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 consideration of like cases.
 11. I am not persuaded that the Council has acted unfairly or inconsistently. The fact that some confusion over permitted development work, which did not arise in regard to an apparently similar proposal at 32 Norman Road but did at the appeal site, led to the applicant withdrawing the original planning application, does not amount to compelling evidence that the Council has somehow acted unfairly or inconsistently in regard to the appeal proposal.

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

12. 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

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

Andrew Bremford

INSPECTOR