
Costs Decision

Site visit made on 4 August 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2020

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3246266 56 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 Mr Antony Lane 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 purposes falling within a C3 (dwelling house) or C4 (house in multiple occupation) to a Sui Generis house in multiple occupation.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
3. This application for costs has been submitted following the failure of the Council to issue a notice of their decision on the planning application within the prescribed period.
4. The applicant contends that the planning application could have been determined before the expiry of the prescribed period and that it should clearly have been permitted as being in accordance with the development plan, national policy and any other material considerations. The applicant also contends that the Council has persisted in delaying a scheme similar to others that have been found to be acceptable by other Inspectors¹.
5. However, although the issue of nutrients causing eutrophication in the Portsmouth Harbour, Chichester and Langstone Harbours and Solent & Southampton Water Special Protection Areas (the SPAs) was known prior to March 2019, the Council explains that it only became aware of Natural

¹ APP/Z1775/W/18/3208412, APP/Z1775/W/18/3198506, APP/Z1775/W/18/3217420, APP/Z1775/W/17/3185652, APP/Z1775/W/19/3227030, APP/Z1775/W/18/3213995

- England's (NE) position to effectively prohibit new residential development if it could not offer appropriate mitigation for additional nutrient output on 24 April 2019, before the target date. I have no reason to doubt that this was the case.
6. Although the PPG states that a local planning authority should make a decision on a proposal as quickly as possible, the Council thus effectively had only a limited period from the expiry of the consultation period until being made aware of NE's position. I therefore do not consider a failure to make a decision prior to 24 April 2019 to be unreasonable.
 7. After the 24 April 2019, from the evidence before me, the Council was unable to issue any decision which would result in an additional dwelling or overnight stay in accordance with NE's advice. This resulted in a delay to the determination of the applicant's application whilst the nutrient output issue was being resolved. However, again I do not consider that the delay was a result of any unreasonable behaviour by the Council given that it was acting in accordance with the advice of the government's advisor on the natural environment and a statutory consultee in circumstances beyond the Council's control.
 8. During this hiatus the revised Housing in Multiple Occupation Supplementary Planning Document (the SPD) was adopted by the Council in October 2019 with a higher standard for the floorspace of communal areas. This is understandably frustrating for the applicant as he has sought to achieve the standard set out in the previous July 2018 version of the SPD. However, there is always the potential that applications will be in the course of determination when new guidance pertinent to those applications is adopted.
 9. This itself is not unreasonable and applications must be determined in light of the planning policy and guidance context pertaining at the time of determination. This context does not include the Housing Act and it is not a consideration of sufficient weight in this case to indicate a decision other than in accordance with the development plan.
 10. I have not been provided with any specific reasons why the Council did not seek to present the proposal at any of its planning committee meetings since December 2019. However, issues relating to NE's advice were not fully resolved resulting in a backlog of affected applications. While such delays are regrettable, they do not amount to unreasonable behaviour given that the Council was seeking to make decisions in accordance with its development plan and the advice of a statutory consultee.
 11. The Council has provided reasons for which it would have refused the application based on an assessment of the scheme against its development plan, recently adopted SPD and the advice from NE. Although the communal space falls short of the standards adopted in the SPD, I consider that there are reasons why its requirement could be set aside in this case. As this is a matter of planning judgement, it follows that the Council did not act unreasonably in saying that it would not have permitted the development to proceed. It has justified its position through the appeal process. The mitigation of the likely effect of the proposed development on the Solent SPAs, on which I have concurred with the Council, also requires resolution.
 12. The previous appeal decisions to which the applicant draws my attention relate to other properties and were determined in the context of the previous version

of the SPD. Therefore, I do not consider that the Council persisted in objections to a scheme that an Inspector previously indicated to be acceptable. Neither am I persuaded that the proposal should clearly have been permitted, having regard to the development plan, national policy and any other material considerations, including those previous decisions by my Inspector colleagues

13. Furthermore, to warrant an award of costs, the applicant has to demonstrate unnecessary or wasted expense in the appeal process. The applicant has chosen to exercise his right to appeal in order to expedite a decision but I have no evidence of any significant additional or wasted expense in this appeal. I cannot take the applicant's expenditure on the appeal properly into account as costs are only awarded for unnecessary or wasted expense in the appeal process.

Conclusion

14. I therefore conclude, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in this appeal. The application for a full award of costs is therefore refused.

Martin Small

INSPECTOR