
Costs Decision

Site visit made on 10 August 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3252516 11 Playfair Road, Southsea PO5 1EQ

- 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 A Pandya 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 C4 (house in multiple occupation) to a house in multiple occupancy for more than 6 persons (Sui Generis).
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Decision

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

Reasons

2. The Planning Practice Guidance (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. The applicant alleges that the Council was unreasonable in refusing a development that clearly should be permitted; persisted in delaying a scheme which an Inspector has previously indicated to be acceptable; and, failed to produce evidence to substantiate its reason for refusal. The Council's response was made in writing, confirming the three principle challenges.
4. I recognise that the property has been fully assessed by private sector housing and holds a House in Multiple Occupation (HMO) Licence for 7 persons. Furthermore, I acknowledge that other Councils HMO guidance for 7 persons require less communal space provision than Portsmouth City Council's adopted HMO Supplementary Planning Document¹ (SPD). However, notwithstanding these points, members of 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.

¹ Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD), October 2019

5. In this regard, the minutes of the Planning Committee meeting state, amongst other things, that *"the communal space (kitchen/dining area) is nearly 12 m² under the standard set out in the HMO SPD. If permission is granted, then it would breach the Council's own SPD"*. Furthermore, the reason why the Council refused the appeal proposal is clearly set out in the decision notice; which is complete, precise, specific and relevant to the application. The decision notice clearly states that the proposal would conflict with Policy PCS23 of the Portsmouth Plan, the National Planning Policy Framework, and the Council's HMO SPD.
6. The applicant refers to an appeal² for a proposal at 14 Wisborough Road where the Inspector commented on a smaller than required communal space being outweighed by having larger bedrooms. The applicant also refers to the previous appeal³ for this site where the Inspector accepted a communal space below the minimum area indicated in the Council's HMO guidance. However, the evidence indicates that since these appeal decisions the Council has updated its HMO SPD. In doing so it increased the requirement for communal space provision. It is clear from the evidence before me that members of the Planning Committee, as a result of the guidance contained within the updated HMO SPD, had regard to the specific material consideration relevant to the appeal proposal, namely the under provision of communal living space.
7. For the above reasons, I am not persuaded that the Council has failed to produce evidence to substantiate its reasons for refusal. It 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 with details about room sizes. Moreover, the Council's decision notice clearly states that the proposal would *"as a result of the conversion of the lounge in to a bedroom and therefore the overall reduction in communal area, fail to provide an adequate standard of living accommodation for future occupiers and would represent an over intensive use of the site."*
8. Reference has been made about the nature of 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 procedure. It would not be appropriate for me to comment any further on such matters.
9. 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

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

Andrew Bremford

INSPECTOR

² Appeal reference: APP/Z1775/W/18/3208412

³ Appeal reference: APP/Z1775/W/18/3198506