
Costs Decision

Site visit made on 14 September 2020

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3254139 4 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 Simon Birmingham 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 'C4 use (house in multiple occupation) to Sui Generis (house in multiple occupation for more than 6 persons)'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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.
3. The applicant claims that the Council's failure to give notice within the prescribed period of a decision on their application for planning permission is unreasonable behaviour. More specifically they state that this failure prevented or delayed the development that should clearly be permitted having regard to the development plan and other material considerations; and persisted in delaying the scheme which the Secretary of State or an Inspector had previously indicated to be acceptable.
4. The appeal site lies within 5.6 km of a group of European designated sites known collectively as the Solent Special Protection Areas (SPA). The proposal was submitted to the Council in September 2019 and the Council states that delays were caused, at least initially, by the lack of suitable mitigation to address likely significant effects on the SPA from deterioration of the water environment. The proposal is not the only scheme whose determination period has been impacted by this matter and the Council explain that they have a number of cases that remain undetermined as a result of this. Furthermore, they highlight that although they have been making resolutions to grant planning applications for several months, they have only been able to formally determination applications that would result in likely significant effects to the SPA since April 2020.

5. I note that the appellant dated their appeal 11 June 2020, after all items for the May 2020 committee were reportedly cancelled. Furthermore, they state it was not an item scheduled for the June 2020 planning committee and it could have been included as an item at a total of five committees. However, I consider that a relatively short period of time has elapsed after the Council were in a position to substantively, and potentially positively, progress what is likely to have been a significant backlog of planning applications. In these circumstances I do not find that the delay of itself was unreasonable.
6. The appellant also contends that the Council took the opportunity created by the delay in determining the application to update its relevant guidance entitled Houses in Multiple Occupation – Ensuring mixed and balanced communities Supplementary Planning Document (SPD). The amendment to the combined living space standard for six or more persons contained within the SPD resulted in their scheme being contrary to the guidance. However, I find no evidence to substantiate the claim that the update was intentionally timed to coincide with the delay in determining planning applications. Moreover, I find that the SPD was updated in October 2019, prior to the original 8-week determination target and as such always likely to be material to the determination of the proposal.
7. As I have set out within my Appeal Decision, I do not find the updated October 2019 SPD to be determinative of the planning merits of this proposal. I have had regard to the relevant local and national policies, as well as a number of other material considerations. Without rehearsing these matters further here, I found that the appeal should be dismissed, and planning permission refused. As such, I do not find that the development should clearly have been allowed.
8. Within their main evidence, the appellant has provided examples of appeals where the Inspector has found that the communal living space falls below the standard within the relevant guidance but, did not find that to be detrimental to the living conditions of future occupiers. Furthermore, they state that committee members consistently ignore previous Inspector's decisions, but I have no evidence to support this assertion. I have not been provided with full details of the various decisions. Furthermore, based on the evidence provided, whilst I note similarities, none of the examples appear to be identical to the matter before me. Moreover, I am not aware of any relevant decisions at the appeal site. As such, I have no evidence to consider that the Secretary of State or an Inspector had previously indicated this proposal to be acceptable.
9. Finally, I note that the appellant has not at any point granted an extension to the statutory determination period for the proposal. Furthermore, they state that they have been provided with no clarity regarding whether the Council would determine the case at a committee or under powers delegated to officers. Whilst I appreciate the appellant's frustration in these circumstances, I do not find that this constitutes unreasonable behaviour.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

James Taylor

INSPECTOR