
Costs Decision

Site visit made on 1 July 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2020

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3245978 66 Margate Road, Southsea PO5 1EZ

- 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 refusal of planning permission for change of use from Class C4 (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. Paragraph 028 of the Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a full award of costs on substantive grounds.
4. The applicant states that the appeal was unnecessary, as the Planning Committee, acting on behalf of the local planning authority, acted unreasonably by refusing the application without credible evidence to support the reason for refusal. The applicant considers that the Council has acted unreasonably because it: prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and persisted in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. Both of these reasons are included within the examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs listed in Paragraph 049 of the Guidance.
5. The applicant has drawn my attention to the conformity of the appeal scheme with the Nationally Prescribed Standards for HMOs within the Housing Act, and

the holding of a 7-person HMO licence, such that the property would provide an adequate standard of living accommodation for occupiers of the HMO.

However, the standards that apply to Licensing and Planning are the subject of separate regulations, and I find that the Council was correct to base its decision upon the merits of the scheme when assessed against relevant Planning policies.

6. Notwithstanding, that I have allowed the appeal, I find that the Council's reason for refusal is complete, precise, specific and relevant to the application and clearly sets out the policy of the Portsmouth Plan and the standard of the Council's adopted Houses in Multiple Occupation Supplementary Planning Document (HMO SPD), against which the Council considers that the proposal would be in conflict. This reason has been adequately substantiated by the Council in its statement of case, which demonstrates why the Council considers that the development does not provide adequate living conditions for future occupiers.
7. The applicant has referred to other Councils HMO guidance, which require lower 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 sqm.
8. There have been no previous appeals in respect of the appeal site. Both main parties have drawn my attention to other appeal decisions in respect of similar development schemes within the Council's area. I have had regard to these decisions, but I must determine the current appeal according to the merits of the scheme before me and the particular circumstances of the appeal site.
9. Accordingly, whilst I have not been persuaded by the Council's case, and I have allowed the appeal, I find that the Council was entitled to refuse the application and has defended the appeal, and has not acted unreasonably in so doing.
10. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR