



Costs Decision

Site visit made on 5 January 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2021

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3252733 20 Montgomerie Road, Southsea, PO5 1ED

- 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 Kevin Zahra 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 C4 (house in multiple occupancy) to a seven person, seven bedroom house in multiple occupancy for more than 6 persons (Sui Generis).
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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 advises that, regardless 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. The applicant contends that the Council prevented or delayed the development which 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 that has been found to be acceptable by other Inspectors.
4. The Council has provided reasons for which it would have refused the application based on the development plan, its revised Housing in multiple occupation Supplementary Planning Document (the SPD) and its responsibilities under the Conservation of Habitats and Species Regulations 2017 (as amended) with advice from Natural England.
5. The communal space in the appeal property falls short of the standard adopted in the SPD. Whilst the standard in the SPD applies for up to 10 persons, I have found that there are inadequate living conditions for the 7 occupiers of the property. As this is a matter of planning judgement, it follows that the Council did not act unreasonably in saying that it would not have allowed the

- development to proceed on this basis. It has justified its position through the appeal process. At the time the appeal was lodged, the mitigation of the likely effect of the development on the Solent SPAs from nutrient discharge also required resolution. The Council has not behaved unreasonably in this respect.
6. Planning 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 nor the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) Regulations 2018. Neither of these are considerations of sufficient weight to indicate a decision other than in accordance with the development plan.
 7. The Inspector that dismissed the previous appeal relating to the appeal property gave no indication of and did not conclude on the acceptability of the communal space in the property. The circumstances of the previous appeal decisions to which the applicant draws my attention are not directly comparable to those of this appeal for the reasons set out in my appeal decision. The decision relating to 14 Wisborough Road was determined in the context of the previous version of the SPD¹.
 8. The potential adoption by the Council of revised HMO guidance in the future with increased communal space standards is not pertinent to the appeal, which must be determined with regard to the current adopted version of the SPD. The standards for communal space adopted in Brighton and Southampton do not apply to Portsmouth city.
 9. Therefore, I am not persuaded that the proposal should clearly have been permitted having regard to the development plan, national policy and any other material considerations, including the previous appeal decision. Neither do I consider that the Council persisted in objections to a scheme that an Inspector previously indicated to be acceptable. I do not accept, therefore, that the Council has behaved unreasonably.
 10. 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 of appeal to expedite a decision after waiting approximately 6 months for a decision. However, even had a decision been made within that time, the Council has indicated that it would have refused the application for reasons that I do not consider to be unreasonable. Therefore, I have no evidence of any significant additional, unnecessary or wasted expense in this appeal.

Conclusion

11. 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

¹ APP/Z1775/W/18/3208412