
Costs Decision

Site visit made on 12 October 2021

by Martin Small BA (Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2021

Costs application in relation to Appeal Ref: APP/Z1775/W/20/3253373 28 Hudson Road, Southsea, PO5 1HD

- 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 partial or 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 change of use from purposes falling within Class C4 (house in multiple occupation) to a 7-bedroom house in multiple occupation (*sui generis*).
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Decision

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

Reasons

2. The 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. The 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 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.
4. 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 occupants of the property. As this is a matter of planning judgement, it follows that the Council did not act unreasonably in finding the development contrary to the development plan and indicating that it would not have allowed the application on this basis. It has justified its position through the appeal process.
5. The planning application was submitted during the hiatus in determining applications because of the nutrients issue following Natural England's advice in April 2019. At the time the appeal was lodged, the mitigation of the likely

effect of the development on the Solent SPAs from nutrient discharge still required resolution. The Council's indicated reasons for refusal did not include any reference to the number of HMOs or the perception of HMO use within the street. The Council has therefore not behaved unreasonably in either respect.

6. The planning application was also submitted approximately only a month before the adoption of the revised SPD and it was always likely therefore that it would have been determined in the context of that version of the SPD. Whilst the adoption of a higher standard in a revised SPD during the course of the application was unfortunate for the applicant, there will always be the potential for new policies or guidance to be adopted whilst applications are awaiting determination. I do not consider the adoption of the revised SPD during this time to be unreasonable.
7. None of the other appeal decisions to which the applicant draws my attention are for the appeal property. Even so, the provision of communal floorspace below the 34 m² standard in the revised October 2019 SPD has been deemed to be acceptable in other appeals for similar development in similar properties, including for the neighbouring property to the appeal property. The applicant has submitted floor plans for the development at No 30 Hudson Road that demonstrate that the area of communal space in that property is slightly less than that in the appeal property before me.
8. However, these were determined either in the context of the lower standard in the previous version of the SPD or where the Inspector, exercising their judgement, considered the communal space to be satisfactory even though it fell short of the standard. The adoption of a revised SPD since the determination of the appeal and subsequent granting of planning permission for No 30 represents a significant material change in circumstances.
9. Planning applications must be determined in the light of the planning policy and guidance context pertaining at the time of determination. This context does not include the Housing Act 2007 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.
10. Therefore, I am not persuaded that the Council has behaved unreasonably in delaying development that should clearly have been permitted with regard to the development plan, national policy and any other material considerations, including the previous appeal decisions. Neither do I accept that the Council unreasonably persisted in objections to a scheme that an Inspector previously indicated to be acceptable. I find that the Council has not unreasonably failed to determine similar cases in a fair and consistent manner in indicating that the application would have been refused partially on the basis of an under provision of communal space given the change in circumstances.
11. Furthermore, to warrant an award of costs, the applicant has to demonstrate unnecessary or wasted expense in the appeal process. The applicant has, understandably, chosen to exercise the right of appeal to expedite matters after waiting approximately 8 months for a decision. However, even if a decision had been made within the 8 months, the Council has indicated that it would have refused the application for reasons that I do not consider to be unreasonable. Consequently an appeal would have been the likely outcome in any event, such that there has been no unnecessary or wasted expense.

12. I have no evidence that the delay and failure to determine the planning application within the prescribed time has itself led to any significant additional, unnecessary or wasted expense in the appeal process. The costs of any works to the appeal property are not recoverable through the appeal process.

Conclusion

13. 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 partial or full award of costs is therefore refused.

Martin Small

INSPECTOR