

Costs Decision

Site visit made on 5 October 2022

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Costs application in relation to Appeal Ref: APP/Z1775/W/22/3298111 3 Pains Road, Southsea PO5 1HE

- 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 Lees 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 C4 House of multiple occupation to Sui Generis House of Multiple occupation for more than 6 persons".
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance¹ (the PPG) states that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG adds that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
3. The applicant considers that the Council has acted unreasonably in preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is also alleged that the Council is persisting in delaying a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. Lastly the applicant argues that the appeal could have been avoided altogether, had the Council provided a copy of the draft agreement required to mitigate the effect of the development on Special Protection Areas. No costs rebuttal has been provided by the Council.
4. A decision made by the Planning Committee contrary to the Case Officer's recommendation does not in itself constitute unreasonable behaviour. Members are entitled to reach a different decision, as long as they do so whilst relying on substantive planning grounds. However, the PPG stresses that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.

¹ Paragraph: 030 Reference ID: 16-030-20140306.

5. The Case Officer's Report to the Planning Committee made it clear to Members that the development had been subject to a previous appeal, the Inspector finding that it "provides satisfactory living conditions for the occupiers of the property with regard to the provision of both personal and communal space and access to bathroom facilities". Notwithstanding this, the Committee resolved to refuse the planning application, notably due to concerns regarding the quality of the accommodation being provided. To my mind, this is in direct contradiction with the findings of the previous Inspector who, having visited the premises, did not identify harm in respect of the quality of the living environment.
6. Furthermore, the Council has failed to explain why, despite the previous Appeal Decision and requests made by the appellant, there appears to have been no progress to date with the preparation of the Planning Obligation which is required to mitigate the adverse effect of the development on the Solent Special Protection Areas. This is causing unjustified delays and additional expense for the applicant, by having to pursue the appeal.
7. In this instance, the Council acted unreasonably by delaying a development which should clearly have been approved. The whole appeal process could and should have been avoided. For the reasons detailed above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is therefore justified, limited to those necessarily and reasonably incurred in the appeal process.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Portsmouth City Council shall pay to Mr Simon Lees, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Portsmouth City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S Edwards

INSPECTOR