



Costs Decision

Site visit made on 21 August 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2023

Costs application in relation to Appeal Ref: APP/Z1775/W/23/3315296 22 Elphinstone Road, Southsea PO5 3HR

- 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 Richard Stidolph for a partial award of costs against Portsmouth City Council.
 - The appeal was against the refusal of planning permission for additional storey to increase the accommodation for flat 7.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application contends that the Council acted unreasonably through:
 - a) preventing or delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy, and any other material considerations;
 - b) failure to produce evidence to substantiate each reason for refusal on appeal; and,
 - c) making vague, generalised, or inaccurate assertions about the proposal's intent, which were unsupported by application documents.
4. All of these are cited in the PPG as examples of behaviour that may give rise to a substantive award of costs against a local planning authority¹.
5. Regarding the first two issues, I concluded in my decision letter that the proposals would be harmful to the character and appearance of the area, and that the appeal should be dismissed. It therefore follows that I am satisfied that the Council was able to substantiate its only reason for refusal. It also follows that the Council did not prevent development which should clearly have been permitted.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. In support of the third issue, the applicant contends that the Council misunderstood the application as being for a new dwelling, citing the delegated report which said the "*Development proposal still constitutes a self-contained dwelling*". This could be read as meaning that the proposal was for a new self-contained dwelling, or that, following the development, the extended unit would still be a self-contained dwelling. The Council accepts that this was misleading. However, the reason for refusal related solely to the appearance of the additional storey, and its impact on the character of the area. Whether or not it was understood to be a separate dwelling was irrelevant. Consequently, the outcome was not affected, the decision would have been the same either way. As I found the reason for refusal to be well-founded, I do not find there to have been any unreasonable behaviour on the part of the Council in this regard.
7. The applicant also contends that the Council did not effectively engage with him, and neglected to sufficiently make any concerns about the proposal known before reaching the decision. The PPG advice is clear, however, that costs cannot be claimed for the period during the determination of the planning application². Nevertheless, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded. In this case, I note that a previous application for an additional storey had been refused. I also note from the application form that no pre-application advice was sought before submission of the revised application. The Council has commented that, when considering the application, there did not appear to be any scope to overcome the harm arising from the proposal. In these circumstances, it was not unreasonable for the Council to proceed to a decision within the statutory timescale.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred, and an award of costs is not warranted.

Nick Davies

INSPECTOR

² Paragraph: 033 Reference ID: 16-033-20140306