

Costs Decision

Site visit made on 11 December 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Costs application in relation to Appeal Ref: APP/Z1775/W/23/3318886 32 Norman Road, Southsea PO4 0LP

- 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 Robert Leatherland for a full award of costs against Portsmouth City Council.
 - The appeal was against the refusal of planning permission for the change of use from C4 (house in multiple occupation) to 7 person, seven bedroom, Sue 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. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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 applicant considers that the Council has behaved unreasonably by preventing and delaying development which should clearly be permitted and had been considered previously acceptable by an Inspector; not determining similar cases in a fair and consistent manner; and by failing to substantiate its reasons for refusal. Although having had opportunity, it is noted that the Council has not submitted a response.
4. It is plainly obvious that nearly 3 years is a substantial delay between the submission of the planning application, on 29 November 2019, and the issuing of a decision notice on 12 October 2022. It is understood that the scheme had not altered from that previously refused and therefore, taking account of the previous appeal decision, the Council should have been capable of issuing a decision in the timely manner.
5. The Council has not provided any justification for such a delay and the appellant felt unable to appeal due to the lack of cooperation from the Council in relation to the legal agreement necessary to secure appropriate mitigation against likely harm to the Special Protection Area. As understandably it would be highly probable that without any mitigation secured an appeal would likely fail. I therefore find on this matter the Council have behaved unreasonably.
6. Acknowledging that I found for the applicant in the appeal, the perceived lack of consistency with the previous Inspector's decision and other similar cases by the Council is noted. However, in October 2019 there was an increase in the internal space standards set out in the Houses in multiple occupation

Supplementary Planning Document (HMO SPD), which from the information before is after the decisions were issued on the cases brought to my attention, but before the submission of the application which forms the basis of this appeal. Therefore, in terms of living conditions the guidance had changed, and the Council drew its conclusions accordingly.

7. Within the minutes of the Planning Committee, it is evident that the changes in the HMO SPD are the primary justification for the refusal of the application and it is a matter of planning judgement as to whether this outweighs the previous Inspector's decision and other matters. As noted in the appeal decision and although I found the communal living space acceptable, it is not so irrational to rely on space standards as a justification for a decision. Therefore, I do not find that the Council have failed to determine similar cases in a fair and consistent manner, nor given consideration to the previous Inspector's decision.
8. The Council's decision notice also cites relevant planning policies in line with section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended and has provided enough information for the applicant to build a strong case for their appeal. Accordingly, although not expansive and contrary to the recommendations of the Council's planning officer the reasons for refusal have been adequately substantiated.
9. I have considered the submitted costs decision¹ and although there are similarities, I am satisfied the circumstances are suitably different to support a different outcome.
10. In summary, I have only found the Council have behaved unreasonably in terms of timeliness and in the balance of probabilities it is likely that the Council would have reached the same conclusions in relation to living standards and the HMO SPD update. Therefore, even if the decision notice were issued earlier, I consider it likely that an appeal would still have been necessary. As such I do not consider the costs of the appeal as unnecessary or wasted and so an award of costs is not warranted.

RJ Redford

INSPECTOR

¹ APP/Z1775/W/22/3303724, APP/Z1775/W/22/3302601, and APP/Z1775/W/22/3303194