
Costs Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

**Costs application in relation to Appeal Ref: APP/Z1775/C/23/3327364
127 Powerscourt Road, Portsmouth PO2 7JQ**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Verncombe for a full award of costs against Portsmouth City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the proposed change of use from a 6 Person HMO (Class C4) to a 7 Person HMO (*sui generis*).
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Decision

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

The submissions for Mr Verncombe

2. Mr Verncombe states it is a fundamental principle of local decision making that a planning committee is not bound to follow the advice of its officers. However, there is a reasonable expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. It did not.
3. Furthermore, whilst costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, the behaviour and actions of the Council at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. In this case the application was submitted in September 2021 but was not determined until July 2023 with the decision issued a month later in August 2023.
4. Having regard to both submissions, the applicant considers that the threshold for an award of costs has been met. This is further strengthened by the Council's failure to respond to the costs application, which must be an admission that unreasonable behaviour has indeed occurred.

The response by Portsmouth City Council

5. The Council were sent a copy of the application on 20 December 2023. A response was due by 9 January 2024 but none was received. A reminder email was sent to the Council on 10 January 2024 extending the response period to 12 January 2024 but to date there has been no response.

Reasons

6. The Planning Practice Guidance (the Guidance) advises that costs may only 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. The Guidance also advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This could be by failing to produce evidence to substantiate reasons for refusal.
7. In this case, the application was decided at a meeting of the Council's Planning Committee on 12 July 2023. The Assistant Director presented the officer's report which included a recommendation that a lawful development certificate be granted. Members asked questions and made some comments, as recorded in the minutes sent with the appeal questionnaire, and then refused the application. It was determined that the development would result in a material change of use on the basis that the increase in occupation would increase the intensity of the use of the building. This would have an effect on local residential amenities having regard to noise, waste, sewage, parking and on the Solent Special Protection Area.
8. Other than the decision letter setting out the reason for refusal and a copy of the minutes, the Council offered no further elaboration of their decision at appeal in a Statement of Case.
9. From the minutes it appears Members asked questions about the loss of communal space, the reasons for the certificate application and commented on the lack of en suite bathrooms. The reason for concluding the proposal would amount to development was that it was "moving above the six persons as a HMO". These points and the reasons for refusal demonstrate that Members had a limited and perhaps incorrect understanding of when a material change of use occurs. Their position could have been explained more fully in a Statement of Case. For example, it was unclear to me what the Council's concerns were about sewerage and whether existing facilities were inadequate.
10. However, no evidence has been produced to substantiate a significant difference in character. Environmental impacts might evidence such a change in character but they are not the cause of the change of use. In addition, I find the applicant's case on this point is strengthened by the Council's failure to offer any evidence to counter the costs application. In my view the failure to substantiate the reasons for refusal amounts to unreasonable behaviour which has led to unnecessary expense in the appeal process.
11. With regard to the second ground of the costs application, it was open to the applicant to lodge an appeal on the grounds of non-determination. When it is clear that a Local Planning Authority will fail to determine an application within the time limits, they should provide a proper explanation. It is not known whether that occurred in this case or even whether the applicant pursued an explanation. All that is stated is that the committee sought directly to intervene in all planning applications relating to HMO's following the Campbell Properties and other appeal decisions. This resulted in a substantive delay in the determination of all planning applications relating to HMO's which came at the direction of the then Leader of the Council, who was a member of the Planning Committee.

12. In any event, the Guidance states at paragraph 33 behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded but that is not to say that they are bound to be. This is because the facts of each application are different as in this case where the applicant had another option open to him.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated on the first ground but not the second. A partial award of costs is justified in respect of the failure to produce evidence to substantiate the reason for refusal.

Costs Order

14. 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 the Council shall pay the applicant the partial costs of the appeal proceedings described in the heading of this decision and incurred in respect of the failure to produce evidence to substantiate the reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent to, details of those costs with a view to reaching agreement as to the amount.

D Fleming

INSPECTOR