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## Costs Decision

Site visit made on 9 April 2024

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 May 2024**

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### **Costs application in relation to Appeal Ref: APP/Z1775/W/23/3330717 78 George Street, Portsmouth PO1 5QY**

- 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 Sean Holdway (Gregory Bros Ltd) 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 conversion to form 2 flats; external alterations to include single storey rear extension.
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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 for costs is based on the Council's failure to determine the planning application within the statutory period, or to honour commitments that were made to proceed to a positive decision by agreed dates. The applicant contends that the planning application was with the Council for 112 weeks, and, as a result, he ultimately felt compelled to pursue an appeal in order to receive a decision on the proposal.
4. The application for costs largely relates to the behaviour of the Council during the consideration of the planning application, rather than during the appeal process. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application, but that all parties are expected to behave reasonably throughout the planning process. Actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
5. The PPG says 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, for example, by unreasonably refusing or failing to determine planning applications. One of the examples it gives of unreasonable behaviour is 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.

6. The PPG also advises that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination, and better communication with the applicant would have enabled the appeal to be avoided altogether.
7. In response to the applicant's claims, the Council argues that the delays in determining the application were due to time being allowed for the appellant to overcome concerns regarding space standards, and to address the issues raised in a consultation reply from Natural England.
8. The evidence shows that the application was originally submitted to the Council on 9 August 2021. At that time, however, the proposal was for the conversion of the dwelling into two 2-bed flats. The drawings showing an amended proposal to convert the building to two 1-bedroomed flats, were not submitted to the Council until 26 July 2023. The appeal was lodged on 4 October 2023. So, although the application had been with the Council for a considerable time, the revised proposal that became the subject of the appeal, had only been under consideration for just over two months. Nevertheless, that is still longer than the statutory period for determining an application.
9. In defending the appeal, the Council clearly set out its reasons why permission would not have been granted had the application been determined within the relevant period. Whilst I concluded in my decision that the development would comply with the aims of Policy PCS19 of the Portsmouth Plan, regarding housing mix and size, the Council provided cogent evidence to support its position on this issue.
10. At the time that the applicant lodged the appeal, no means of securing mitigation for the effect of the development on the integrity of the Solent Special Protection Areas had been provided. The appellant sought to pursue this matter during the course of the appeal, but I found in my decision that the lack of a legal agreement meant that I could not be satisfied that the direct payments would, in practice, secure delivery of the necessary mitigation. It is therefore clear from the evidence, that the Council was not in a position to approve the application at the point at which the appeal was submitted. It follows that the Council did not prevent or delay development which should clearly have been permitted.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred, and an award of costs is not warranted.

*Nick Davies*

INSPECTOR