



Costs Decision

Site visit made on 23 July 2024

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Costs application in relation to Appeal Ref: APP/Z1775/W/23/3330214 61 St Chads Avenue, Portsmouth PO2 0SD

- 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 Harfield (GG-726-788 Limited) for an award of costs against Portsmouth City Council.
 - The appeal was against the refusal of the Council to grant planning permission for change of use from dwellinghouse (Class C3) to 7 person/7-bedroom House in Multiple Occupation (HMO).
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Decision

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

Reasons

2. Paragraph 028 of the Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking an award of costs on substantive grounds.
4. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: 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; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The application was refused for two reasons. The first reason relates to the ability of the proposal to provide adequate capacity for foul drainage and the implications of this for localised flooding. The second reason relates to the provision of adequate mitigation for the Solent Special Protection Areas (SPAs).

6. The Council's Committee Report confirms that at the time of the application determination, the Council considered the second matter to be capable of resolution by means of the completion of a Legal Agreement to secure the required mitigation in accordance with the Council's adopted mitigation strategies relating to SPA impacts arising from recreational activity and increased levels of nutrients.
7. As such, the original officer recommendation to Committee was to grant delegated authority to the Assistant Director of Planning and Economic Growth to grant conditional permission subject to the satisfactory completion of the required Legal Agreement, provided this was executed within 3 months of the Committee resolution. Otherwise, the application would be refused.
8. The evidence before me is that the applicant and the Council had been working proactively together to progress the Legal Agreement prior to the Committee date. As such, it is reasonable to assume that the Legal Agreement would have been capable of being completed within the required 3 months after the Committee date. With this in mind, it is the Council's first reason for refusal which has necessitated the submission of the appeal.
9. The Council provided a very brief appeal statement, which does not add any significant explanatory detail to the first reason for refusal, noting that the Committee Report does not assist in this respect, as the application was originally recommended for approval.
10. My appeal decision, which accompanies this costs decision, and should be read in conjunction with it, explains why I have allowed the appeal. It explains why I found that the Council had relied upon third-party evidence which had been presented to the Planning Committee, without providing any further detailed analysis at appeal as to how that evidence directly relates to the appeal scheme and how it justifies the Council's first reason for refusal.
11. Moreover, the Council's statement did not demonstrate that it had taken into account the fact that the appeal site was already connected to the public sewer system and that this would not change, and the implications of this in light of the likely difference in load upon the system arising from the appeal scheme compared to that arising from the lawful dwellinghouse use.
12. Moreover, the Council's statement failed to recognise the role of the statutory sewerage undertaker and its legal duties under S94 of the Water Industry Act 1991 and the implications of such for its first reason for refusal.
13. As such, I find that the Council failed to produce evidence to substantiate the first reason for refusal and relied upon vague and generalised assertions about the proposal's impact upon localised flooding, which were unsupported by objective analysis.

Conclusion

14. I therefore find that, by refusing the planning application based on the first reason for refusal, and by not presenting full and detailed evidence to support its case at appeal, it has relied upon a reason for refusal which does not stand up to scrutiny on the planning merits of the case and has caused the applicant avoidable delay.

15. This has comprised unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance. An award of costs, to cover the expense incurred by the applicant as a result of having to contest the Council's first reason for refusal, is therefore justified.

Costs Order

16. 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 Harfield (GG-726-788 Limited) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred as a result of contesting the Council's first reason for refusal.
17. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Leonard

INSPECTOR