



Costs Decision

Site visit made on 15 October 2024

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2024

Costs application in relation to Appeal Ref: APP/Z1775/W/23/3335595 73 Margate Road, Southsea, Portsmouth PO5 1EY

- 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 Briscoe for a full award of costs against Portsmouth City Council.
 - The appeal was against the refusal of planning permission for one additional bedroom to the existing HMO.
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Decision

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

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; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and acting contrary to, or not following, well-established case law.
5. The application for costs essentially relies upon the fact that the officer committee report recommended that unconditional planning permission be granted. This was on the basis that officers considered that there was no material change of use of the property and therefore the appeal scheme does not comprise 'development' requiring planning permission under s55 of the

Town and Country Planning Act 1990. As such, officers considered this fallback position, whereby the appeal scheme could be carried out without planning permission, to be a material consideration of foremost significance, so that unconditional planning permission should be granted without a requirement for mitigation in respect of impacts upon the Solent Special Protection Areas (SPAs).

6. The appellant's view is that Council Members acted unreasonably by taking a different course of action without adequate reasons to do so, resulting in costs arising from both the Council's reasons for refusal.
7. In this case I have noted the recommendation of the Council's officers. However, whilst mindful of the views of other appeal Inspectors in respect of different sites, the consideration of whether a change of use is a material change is a matter of fact and degree to be assessed on the circumstances and merits of each case.
8. In this case, the Council Members considered that the appeal scheme would comprise a material change of use. This is a matter of judgement, and I find that the Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view. In this case, the Council Members confirmed that their view was based upon impacts upon parking, waste, noise, and antisocial behaviour arising from the increase in occupation.
9. Having found there to be no fallback position, the Council refused the application for two reasons. The first reason relates to the ability of the proposal to provide appropriate living conditions for future occupiers, having particular regard to internal living space. The second reason relates to the provision of adequate mitigation for the Solent Special Protection Areas (SPAs).
10. My appeal decision, which accompanies this costs decision, and should be read in conjunction with it, explains why I have not found there to be a fallback position that warrants unconditional approval of the appeal scheme or negates the requirement for SPA mitigation measures.
11. Moreover, the Council's reasons for refusal, as set out in the decision notice are complete, precise, specific, and relevant to the application. They also clearly set out the Council's adopted policies and guidance with which it considers the appeal scheme to conflict.
12. My appeal decision explains why I have not found harm in respect of the first reason for refusal. Notwithstanding this, I consider it has been adequately substantiated by the Council in its appeal statement, having regard to the references to the Council's adopted minimum room size standards in the HMO SPD (2019) in relation to the room size and layout implications of the appeal scheme.
13. Moreover, my appeal decision confirms why I have found that SPA mitigation is required in respect of recreation and nutrient impacts, and I have therefore dismissed the appeal based on the Council's second reason for refusal.
14. Accordingly, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.

Conclusion

15. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR