



Costs Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2025

Costs application in relation to Appeal Ref: APP/Z1775/X/24/3347863

- 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 Jim Briscoe for a full award of costs against Portsmouth City Council.
- The appeal was against the refusal of the Council to issue a certificate of lawful use or development (LDC) for internal alterations to form a new bedroom and the use of the building as a 7-bedroom/7-person 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. 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 decision to refuse to issue an LDC was taken by the Council's Planning Committee contrary to professional advice. A decision-maker is not obliged to follow such advice, but the PPG indicates that any decision must be supported by objective analysis and evidence that substantiates any refusal.
4. The Committee decided that adding a 7th resident and a 7th bedroom to the HMO would constitute a material change of use. The reasoning given is that increases in 4 factors - parking demand, domestic waste, noise and anti-social behaviour - would make a significant difference in the definable character of the use.
5. The Council's case on parking and refuse storage contradicts the evidence of the report before the Committee, which confirmed that the Council has identical expectations of 6-person and 7-person HMOs for both. No evidence or analysis to justify the Committee's different assessment in this case has been produced.
6. The report also advised that a 7th bedroom in the roof space and a 7th person using the HMO's communal facilities were not expected to result in a material difference in noise experienced by neighbours. It also stated that there was no evidence to link higher occupation levels within HMOs of this type with increased anti-social behaviour. The Council has not provided any evidence or analysis to justify the different assessment made by the Committee.
7. Planning permission had previously been refused for the same development having regard to the fact that some rooms within the HMO would be smaller than required by planning policy. A transcript of the Committee meeting shows that members repeatedly articulated a wish to determine the LDC application on the same basis.

8. That was despite consistent advice in the report and from officers at the meeting that the relevant issue is whether an increase from 6 to 7 occupants in the HMO would result in a material change of use requiring planning permission. The desire to refuse to issue an LDC based on room sizes persisted even after officers had identified that increases in the 4 factors considered above would be relevant to the decision the Committee was to make.
9. One possible reading of the full transcript of the Committee's debate is that the anticipated increases in the 4 factors were adopted to serve in place of its members' concern about room sizes. Even if that were not so, it remains that the Council has failed to present evidence or objective analysis to substantiate a material change in any factor on which its stated decision rests. That is sufficient to confirm that it acted unreasonably and so forced the applicant to pursue the appeal and incur all the costs that followed.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

11. 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 Jim Briscoe, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. 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.

Mark Harbottle

INSPECTOR