



Costs Decision

Site visit made on 29 April 2025

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th May 2025

Costs application in relation to Appeal Ref: APP/Z1775/W/24/3349277

38 Merrivale Road, Portsmouth PO2 0TJ

- 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 Leslie Clarke (Robwill Ltd) for a full 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 three 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). The third reason is concerned with the impact upon neighbouring living conditions, having regard to a fear of crime.

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. This would 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 receipt of no objection from Natural England and 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 S.111 Agreement which was subsequently submitted at appeal to address this matter is a straightforward document in a format which is routinely used by the Council to deal with SPA mitigation. As such, it is reasonable to assume that the matter would have been capable of being resolved within the required 3 months after the Committee date. Notwithstanding this, if the Planning Committee had agreed with the recommendations of the Officer Report, the above process would have resulted in a delay in the Council granting permission until the mitigation issue had been addressed. However, in this case, there has been no unnecessary delay in this respect, since the Council disagreed with the Officer recommendation for other reasons. As such, it is the Council's first and third reasons for refusal which have 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 and only briefly expands upon the third reason by stating that the proposal would not sufficiently preserve the security of the shared access down the adjoining property (incorrectly identified as No.36 instead of No.40). The Officer Committee Report does not assist, 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. In respect of the first reason for refusal, it states how, with reference to the Minutes of the Planning Committee, I found that the Council had relied upon evidence presented at the meeting by a Councillor, but that no further detailed analysis was provided at appeal as to how that evidence, or that of other interested parties regarding this matter, directly relate to the appeal scheme and how they justify 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, there was no evidence of the Council having consulted Southern Water in respect of the planning application or appeal, and 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. Having regard to the Council's third reason for refusal, my decision explains why I have found that the Council has provided no substantive evidence of how the appeal scheme use, design and layout would reasonably result in an increased risk of crime.
14. As such, I find that the Council failed to produce evidence to substantiate its first and third reasons for refusal and that it relied upon vague and generalised assertions about the proposal's impacts upon localised flooding and neighbouring living conditions, which were unsupported by objective analysis.

Conclusion

15. I therefore find that, by refusing the planning application based on the first and third reasons for refusal, and by not presenting full and detailed evidence to support its case at appeal, the Council has relied upon reasons for refusal which do not stand up to scrutiny on the planning merits of the case. This has caused the applicant avoidable delay by having to go through the appeal process.
16. This has comprised unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance. An award of costs, to cover the expenses incurred by the applicant as a result of having to contest the Council's first and third reasons for refusal, is therefore justified.

Costs Order

17. 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 Leslie Clarke (Robwill Ltd) 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 and third reasons for refusal.
18. 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