The Planning Inspectorate

Costs Decisions

Site visits made on 20 February 2023

by D M Young JP BSc (Hons) MPlan MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Costs application in relation to Appeal Ref: APP/Z1775/W/22/3302601 123 Talbot Road, Southsea, PO4 0HD

- 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 Anthony Lane for a full award of costs against Portsmouth City Council.
- The appeal was against the refusal of planning permission for a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis).

Costs application in relation to Appeal Ref: APP/Z1775/W/22/3303724 48 Jessie Road, Southsea, PO4 0EN

- 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 Anthony Lane for a full award of costs against Portsmouth City Council.
- The appeal was against the refusal of planning permission for a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis).

Costs application in relation to Appeal Ref: APP/Z1775/W/22/3303194 56 Jessie Road, Southsea, PO4 0EN

- 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 Anthony Lane for a full award of costs against Portsmouth City Council.
- The appeal was against the [refusal of planning permission for a change of use from purposes falling within a class C4 (house in multiple occupancy) to house in multiple occupancy (Sui Generis).

Decision

1. The applications for an award of costs are allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the PPG) advises that the aim of the costs regime is to "*encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay*".

3. The PPG goes on to advise that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses. Examples of unreasonable behaviour by planning authorities include:
    - A failure to produce evidence to substantiate a reason for refusal on appeal;
    - The use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
    - 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.
    - Not determining similar cases in a consistent manner, and
    - Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable;

4. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

5. The applications were submitted in August 2020 following the dismissal of the previous appeal decisions. The target dates were 11 February 2021. However, the applications were not determined until 26 May 2022, a period of approximately 21 months. According to the applicant, no extensions of time were agreed.

6. In its Costs Response, the Council explain that the delay in determining the applications was due partly to the Campbell Properties appeal decision which was issued during the lifetime of the application and partly because the Leader of the Council decided that all HMO applications should be determined by the Planning Committee.

7. While these arguments are superficially attractive, they dissolve almost instantly upon examination. The Campbell Properties appeal decision was issued on 29 April 2021, over 11 weeks after the target date for these applications. It was not therefore within the "*timeframe of the applications*". There was simply no justification for not determining the applications in a timely fashion given that the previous Inspector's decision had already made it clear that only the SPA mitigation issue needed to be resolved. To that end, had the Council forwarded the s106 agreement to the applicant in a timely manner, as promised, then the target date could have been met.

8. Even if there was some justification for wanting to wait until the Campbell Properties appeal decisions were issued, no cogent explanation has been provided to explain why it took a further 12 months to bring the applications to Committee. It is simply not credible to suggest it took Officers over 12 months to digest the Campbell Properties decision. I therefore find that the delays to determining the applications were unreasonable.

9. The main thrust of the applicant's case is that the Council, or more specifically its Planning Committee, failed to have proper regard to its development plan and the previous appeal decisions. In all these cases, the Officers' Reports set out the relevant policy context and the findings of the previous Inspector. The reports also clearly explained Officers' view that the proposals did not require planning permission, citing the Campbell Properties appeal decision. The conclusion reached in all three reports was unequivocal:

   "*As detailed above the application is considered to fully comply with the relevant policies of the Local Plan. However, notwithstanding the compliance or otherwise of the proposal with the policies of the Local Plan it is noted that on the details of this case the changes in the character of activities are not sufficiently significant, as a matter of fact and degree, to be considered to result in a material change in the use of this dwelling. As such planning permission is not required for the use described in the application and the proposal could be carried out as a fall-back position irrespective of the determination of this application. This is considered a material consideration of overriding weight, and unconditional planning permission should therefore be granted*".

10. While it is a fundamental principle of local decision making that a planning committee is not bound to follow the advice of its officers, there is a reasonable expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. That very clearly did not happen in this instance.

11. No substantial reasons were provided by the Council in its Statements of Case to support the first reason for refusal which effectively rehearsed the same arguments that were before the previous Inspector. The Committee Minutes supplied by the Council show that the Assistant Director of Planning and Economic Growth advised Members that the previous appeals on these three sites pre-dated the Campbell Properties appeal decision. Moreover, that planning permission was only dismissed on the single issue of SPA habitat mitigation. Members were also advised verbally that as the previous Inspector had found the development would not result in inadequate communal living space, any subsequent Inspector would be likely to follow the previous decision.

12. Unfortunately for reasons that are not entirely obvious, Members chose to depart from that very clear and cogent advice. The comments contained in the four bullet points under the heading "Member's Comments" demonstrate a disturbing lack of awareness of basic planning procedure and law. The fact that the previous Inspector had found the amount of living space to be acceptable, was seemingly brushed aside on the basis that there was no change to the previous application and therefore no reason for a different decision. The logic of that comment is difficult to comprehend and clearly amounts to unreasonable behaviour.

13. The other comments relate to general observations at other properties in the local area and a desire to see stronger provisions for space standards in the development plan. These were not matters that were relevant to the three appeal schemes.

14. T

15. There is no explanation in the Minutes, nor the Council's Statement of Case, why Members disregarded the Campbell Properties appeal decision. They were of course entitled to do so, provided that very careful justification was provided. That did not happen, and it appears that Members simply failed to grapple with the material change of use issue. That failure was further compounded by its failure to explain how an additional occupant at each property would result in an over intensive use of the site.

16. In respect of the application for 123 Talbot Road, Members commented that Inspectors in a number of non-specified appeal decisions had found the removal of living space to create an additional bedroom to be unacceptable. The Council's Costs Response refers to decisions at 15 Shadwell Road, 28 Hudson Road, 118 Prince Albert Road and 127 Powerscourt Road. [1]

17. I have already dealt with the relevance of the Shadwell Road decision in my appeal decisions, and I do not need to repeat those comments again here. Copies of the other decisions have not been supplied. Nonetheless it appears the circumstances of those cases were materially different to the ones before me. Furthermore, the Inspectors' conclusions in those cases were evidently based upon a careful consideration of the site-specific merits of each case. That is the very opposite of what happened here. In any event, an appeal decision on a different site would rarely justify a Council from persisting in objections to a scheme which an Inspector has previously indicated to be acceptable.

18. The Council's conduct in relation to the second reason for refusal was patently unreasonable. The email chain submitted with the Cost Applications shows the applicant's agent originally wrote to the Council in November 2020 asking them to prepare section 106 agreements to deal to the SPA mitigation. The matter was chased by the agent on 8 January 2021, 2 February, 16 March, 29 March, 13 April, 4 May, 13 May, 27 May, 15 June, 3 September and 28 February 2022. By the time of the planning committee meeting some 18 months later, the Council had still failed to provide a s106 agreement. While I appreciate that planning departments tend to be busy and understaffed, that cannot be used as any kind of excuse for the levels of service suffered by the applicant in these cases which can only be described as appalling.

Conclusions

19. The Council's decision to refuse planning permission for these schemes patently failed to stand up to scrutiny on appeal and this means that the Council's decision was injudicious.

20. I have found that the Council behaved unreasonably across several fronts including, but not limited to, unacceptable delays in determining the applications and the repeated failure to provide the applicant with a s106 agreement. The Planning Committee's decision, in particular its failure to heed the clear advice of its officers in relation to the previous appeal decisions, was unreasonable, irrational and flew in the face of established planning practice and law. The Council is also guilty of using vague, generalised or inaccurate assertions about the proposals' impact and manifestly failed to produce evidence necessary to substantiate the reasons on appeal.

[1] PINS Refs: APP/Z1775/W/21/3289027, APP/Z1775/W/20/3253373, APP/Z1775/W/21/3269184, APP/Z1775/W/21/3266710.

21. Accordingly, I conclude that the unreasonable behaviour threshold has been clearly passed. This resulted in the wasted expense of the applicant having to pursue these appeals. I therefore conclude that a full award of costs is justified.

Costs Order

22. In the 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 Mr Anthony Lane, the costs of the appeal proceedings described in the heading of this decision.

23. 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.

D. M. Young

Inspector