

**Decision maker:** Planning Committee - 17 August 2016

**Subject:** Planning appeal decision relating to 26 Merton Road

**Report by:** Assistant Director of Culture & City Development

**Ward affected:** St Jude

**Key decision (over £250k):** No

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### 1. Purpose of report

To advise the Committee of the outcome of the appeal, which was allowed and that a claim for an award of costs made by the appellant was also allowed.

### 2. Recommendation

That the Inspectors Report and findings against the Council leading to the award of costs be received and noted.

### 3. Comments

The planning application to which this appeal related sought permission for a change of use from a nursing home (Class C2) to a house in multiple occupation for 12 persons (sui generis) to include alterations to the front boundary wall, the provision of refuse and cycle storage and landscaping. The application was refused by the Planning Committee at its meeting on the 3<sup>rd</sup> of February 2016 against the Officers recommendation with the reasons for refusal relating to the impact of the proposal on the Owens Southsea Conservation Area and the highway impact on increased demand for parking.

The Inspector noted the character of the Conservation Area and the legal duty imposed upon the decision maker. The Inspector recognised that "when operating as a nursing home Nos 24/26 could accommodate a total of 15 residents" and "whilst it might not have operated at full capacity throughout the year, there would have been comings and goings associated with staff, visitors and deliveries throughout the day and, quite possibly, into the early evening. There was no substantiated evidence submitted with the appeal to demonstrate that the use of the property as a 12 bedroom HMO would generate a significantly greater number of movements than the former nursing home".

The Inspector noted the views of local residents regarding the possibility of anti-social behaviour, the aims and objectives of policy PCS20 in regard to HMOs and comments the nature of the proposed alterations to the site. The Inspector concluded "that the change of use would preserve the character and appearance of the Owen's Southsea Conservation Area. The proposal would therefore comply with the requirements of

Policy PCS23 of The Portsmouth Plan, which requires development in conservation areas to respect the city's historic townscape and cultural heritage. It would also accord with the Framework's advice to conserve historic assets in a manner appropriate to their significance".

The Inspector noted that "the streets around the appeal site are restricted in width but are available for on-street parking" and that whilst "the junctions are protected by yellow lines and some entrances are indicated by advisory white road markings ... the area is not part of a controlled parking zone that restricts the availability of on-street parking in other respects". The Inspector noted that "at the time of my site visit, which took place in late morning, all the on-street parking was being well-used" and found this to be "consistent with the highway authority's comments on the application and representations made by local residents, from which it is apparent that on-street parking in the area is used to capacity".

The Inspector recognised that "the site is in a highly accessible location within 400m of town and district centres and a high frequency bus corridor. There are therefore good opportunities for future occupants to access facilities and services by walking, cycling or using public transport, in preference to owning a car. The proposal includes provision of weatherproof, secure cycle storage for up to 13 bicycles. Furthermore, the two existing parking spaces would be retained, which complies with the requirements set out in the Council's Supplementary Planning Document: Parking Standards and Transport Assessments (SPD), adopted July 2014". The Inspector concluded that "the change of use is therefore unlikely to result in a material change in the demand for car parking in the surrounding area" and as a result that "that the proposed change of use would not give rise to increased inconvenience for road users arising from additional demand for on-street parking. The proposal would comply with Policy PCS17 of the Portsmouth Plan, which seeks to encourage walking, cycling and the use of public transport, alongside the provision of parking spaces in accordance with the standards set out in the SPD".

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. The PPG makes it clear that a Local Planning Authority is at a risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

The Inspector noted that "in reaching their decision Members gave greater weight to the views expressed by local residents than the professional advice of officers" and recognised that "Members are not obliged to accept the recommendations of their officers, provided that they can show reasonable planning grounds for doing so, supported by relevant evidence on appeal".

The Inspector considered that "no objective analysis presented with the appeal as to why an HMO would result in a materially harmful change in the character of the area. There was therefore insufficient justification overall for the Council to reject the scheme because of any harmful effects on the Owen's Conservation Area. Similarly, there was no substantiated evidence provided to support the contention that the proposal would lead to an unacceptable increase in the demand for on-street parking.

Considered as a whole the Council's appeal statement did not, in my view, adequately support its reasons for refusal".

The Inspector concluded that "the Council's decision has delayed development which should have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. I consider that the Council acted unreasonably in reaching its decision. This left the appellant with no option other than to pursue the appeal, which caused him to incur the expense of presenting his case" and found "that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and an award of costs is justified".

**4. Reasons for recommendations**

For information to the Planning Committee

**5. Equality impact assessment (EIA)**

None.

**6. Legal Services' comments**

The report is for information only.

**7. Finance's comments**

The report is for information only.

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Signed by:

**Appendices:**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
Planning application file 15/01891/FUL	Planning Services
Inspector's decision APP/Z1775/W/15/3145065	Planning Services