

Costs Decision

Site visit made on 21 November, 2016

by C. Jack, BSc (Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th December, 2016

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3155703 Flat A, 22 Wellington Road, Brighton, BN2 3AA

- 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 Ms. Orly Klein for a partial award of costs against Brighton and Hove City Council.
 - The appeal was against the refusal of planning permission to install a front roof light and rear toilet addition plus roof light.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. The application for costs essentially relied on behaviour by the Council in processing and determining the planning application. This included the length of time taken to determine it. The applicant considered that the planning application was very minor in content such that it may not have required planning permission, at least in part, had the property been a single domestic dwelling, rather than a flat.
 4. The applicant further considered that the appeal would not have been necessary had the Council carried out a site inspection, because this would have led it to a different decision. She also considered that the Council's requirement for a scaled drawing resulted in additional time spent by the agent in respect of the application, when a good photographic image of the roof light installed at the adjoining property could have shown what was proposed in the application.
 5. It appears that the Council did not determine the application within the standard timeframe, but that it did determine it within an extension of time, previously agreed with the applicant. Irrespective of whether or not the proposal was minor in nature, the Council did not behave unreasonably in determining the application to an agreed timetable.
 6. It is common practice for Councils to require appropriate scaled drawings to detail the development proposed in the planning application as part of the validation process. This allows for proper consideration of the proposal and provides greater certainty than a photographic image, even if the proposal
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would be minor or similar to existing development nearby. Accordingly, the Council was not unreasonable in requiring suitable scaled drawings to show the full extent of the development proposed. This would be equally the case in relation to proposed development that might have constituted permitted development in other circumstances.

7. The Council's Officer Report advises that the case officer conducted a site visit to the area, which included viewing the rear elevation of the application property from nearby properties in De Montfort Road. This was done because it was considered that the limited depth of the rear yard at No 22 Wellington Road would not have afforded such a good view of the rear elevation of the application property. I am satisfied, given the position and nature of the development proposed, and the constraints of the application site, that this was not an unreasonable approach for the Council to take. I also see no significant reason to believe that the Council did not undertake the visit before determining the application.
8. The PPG states that examples of unreasonable behaviour by local planning authorities include 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 analysis¹. Furthermore it states² that costs can only be awarded in relation to unnecessary or wasted expenses at the appeal, albeit behaviour and actions at the time of the planning application can be taken into account.
9. The reason for refusal set out in the decision notice was complete, precise, specific and relevant to the application. It clearly stated the policy of the Brighton and Hove Local Plan 2005 that the Council found the proposal to conflict with. The reason for refusal was adequately substantiated by the Council in its Officer Report, which explained its analysis and reasoning that the proposal would be visually discordant and result in a loss of symmetry with the neighbouring property. The Officer Report was submitted to substantiate the Council's case at the appeal.
10. Notwithstanding that I came to a different conclusion to the Council in allowing the appeal, I am satisfied that the Council did not act unreasonably in its refusal to grant planning permission, and that it substantiated its case at the appeal.
11. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Accordingly, and having had regard to all matters raised, an award of costs is not justified.

Catherine Jack

INSPECTOR

¹ Paragraph 049 Ref ID: 16-049-20140306

² Paragraph 033 Ref ID: 16-033-20140306