
Costs Decision

Site visit made on 5 December 2016

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 16th December 2016

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3153272 Media House, North Road, Preston, Brighton BN1 6SP

- 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 C Weatherstone of Stonechris Properties Ltd for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for an extension and alteration to form 4 residential units. Removal of existing mansard roof and front facing dormers. New roof with conservation roof lights. Parking, bike and bins storage and appropriate alterations.
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Decision

1. The application for costs is refused.

Reasons

2. The 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. The PPG advises that a local planning authority may risk an award of costs by unreasonably failing to determine planning applications and so prevent or delay development which should clearly have been permitted.
 3. The application for costs relies firstly, on the delays that were experienced due to the local planning authority's failure to determine the application within the statutory time limit. Secondly, the appellant considers that the Council subsequently failed to take account of material considerations when refusing an identical application.
 4. I understand that the appellant was frustrated that his application was not determined within the eight week statutory time limit and that it was 9 May 2016 before an extension of time until 28 May was sought. However, the application before me was submitted on 30 October 2015, only shortly after the approval of the previous application, BH2015/00544, on 12 October. In these circumstances, I do not consider the Council acted unreasonably in prioritising other applications having regard to its responsibilities to manage a heavy workload with limited resources.
 5. I note that the appellant also submitted another application, BH2015/04297, to remove the requirement to provide the improved and enlarged office
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accommodation within the Coach House by deleting Condition 4 of the approved scheme. This application was refused on 1 June 2016. I do not have details of when that application was submitted or any substantiated evidence of the time taken for the Council to reach its decision. However, that refusal made it clear to the appellant that the Council considered there was a need to offset the net loss of employment floorspace across the wider site, in order to ensure that the scheme was not in conflict with Policy CP3 of the Brighton & Hove City Plan.

6. At the beginning of June the appellant would therefore have been aware that, notwithstanding the delays, there was a likelihood that the appeal scheme would also have been refused. It was therefore his choice to pursue the appeal process, which he did on 27 June 2016, whilst also submitting another identical application, BH2016/02382. I understand that the Council refused this second application within the statutory time limits. In doing so, it gave clear reasons based on the development plan and having regard to the planning history of the site. In these circumstances, I consider it was reasonable for the Council to rely on the report on that application to support the appeal, following its failure to determine the original application.
7. The scheme before me would have led to a material increase in the loss of employment floorspace on the site, over and above both the extant scheme and the scheme approved as permitted development. It seems to me that this was the determining factor, particularly in the absence of evidence to demonstrate that the floorspace that would have been lost is genuinely redundant.
8. Irrespective of whether or not the previous prior approval could be implemented due to changes in the regulations, the Council accepted that a similar approval could be obtained which would result in the loss of the B1 employment floorspace on the first and second floors of Media House. However, the B2 floorspace on the ground floor would have been retained under the prior approval previously granted. The Council therefore did not act unreasonably, notwithstanding the difference of view between the parties in relation to the changed permitted development rights. The delay, whilst frustrating for the appellant, did not prevent the approval of a development which should have been permitted, having regard to its accordance with the development plan, national policy or other material considerations.
9. It therefore follows that, notwithstanding the delays experienced as a consequence of the failure of the Council to determine the application, the only way for the appellant to test the difference between the approved schemes and the revised proposal was to pursue the appeal. In so doing he did not, therefore, incur unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Sheila Holden

INSPECTOR