
Costs Decision

Inquiry held on 29 and 30 November and 1 December 2016

Site visit made on 1 December 2016

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 21 February 2017

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3147426 6 Falmer Avenue, Saltdean, Brighton BN2 8FH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hyde New Homes and Mr E McNorvell for a full award of costs against Brighton & Hove City Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of the existing house and stables and construction of 32 new family dwellings together with open space, landscaping and associated access road and parking and a new pedestrian link between Falmer Avenue and South Downs footpath.
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Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. Written notification of an application for an award of costs was provided before the Inquiry opened, which set out an outline of the basis on which the claim would be made. The notification confirmed that the application would be for a partial award. It was however put to me at the Inquiry that should I find that the reason for refusal was unacceptably unclear that this would amount to unreasonable behaviour which may justify a full award of costs. Accordingly, I have considered the application on the basis that a full award is sought. This does not, of course, prevent me from considering the merits of any partial award in the event that a full award is not justified.

The submissions for Hyde New Homes and Mr E McNorvell

3. It was put to me that if harm to the landscape was to be claimed that this should have been supported by an appropriate expert witness, which, it was contended, Ms Murphy is not, and an objective assessment of the impact provided.
 4. In general the appellants were concerned that the reason for refusal was not sufficiently clear or precise in terms of its identification of harm. It is further contended that Ms Murphy's evidence strayed beyond the remit of the reason for refusal to address matters that the Council Committee had expressly not carried in a vote on a second reason for refusal, namely matters related to adverse impact on landscape character, visual amenity, adverse impact on the setting of the National Park and overdevelopment.
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5. The appellants' contention is that the reason for refusal which was adopted by the Committee is only about the design of the scheme in terms of the style of the properties and their materials. Furthermore, that the harm arising from those elements is in relation to effect on the surrounding urban area, which the appellants contended is what the Council means by its reference to urban fringe area.
6. On the basis of the above the appellants contend that the Inquiry was prolonged by the introduction of new reasons for refusal; that they had to address matters that were not matters that should have arisen; that the Council failed to co-operate to clarify its concerns in the reason for refusal, thereby compounding these concerns. Furthermore that the Council did not provide evidence to substantiate the reason for refusal and provided vague and generalised assertion about the proposals' impact. It is argued that the appellants therefore incurred unnecessary and wasted expense in having to address these matters

The response by Brighton & Hove City Council

7. The Council provided a written response to the initial costs claim notification which was read out at the Inquiry. They did not add to that statement.
8. In essence the Council are clear that Ms Murphy's evidence did not stray beyond its remit or the matters raised in the reason for refusal. Whilst it is accepted that the second reason for refusal debated by the committee, which was not adopted, referred to scale and associated site coverage, the agreed reason for refusal refers to design. Ms Murphy's view on design was fully explained and took account of the manifestation of plan form, scale, mass and overall size of the buildings and their arrangement.
9. So far as the matters of landscape and visual impact are concerned, the Council contend that the reference to the urban fringe and prevailing character does not relate solely to the urban area and Ms Murphy clearly explained how she interpreted the urban fringe and what that comprised – a countryside location, on the edge of Saltdean, on the edge of the South Downs National Park.
10. The Reason for refusal clearly references the appropriate policies in these matters and it was around these policies that the Council's evidence was presented. As to the lack of engagement or co-operation it is noted that Ms Murphy did respond to queries from the appellant and was fully engaged in the preparation of the statement of common ground to clarify issues of agreement and dispute.

Reasons

11. The Planning Practice Guidance 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.
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13. In terms of the reason for refusal this identifies that the Council were concerned with the design of the development and identified that it was, in its view, out of keeping with the prevailing character of the urban fringe area. It then adds to this, by the use of the 'and' that the development does not

- emphasis the areas positive characteristics in terms of prevailing style and materials. This element does not seek to limit the first part of the sentence and thereby limit the definition of design but is rather an additional aspect of that. The harm that arises from that conflict is then identified as resulting in detriment to the local area and failure to enhance the surrounding landscape. Whilst a failure to enhance can be criticised in a reason for refusal as this does not identify harm, the first part addressing detriment to the character of the local area is not so limited as the appellants suggest.
14. The appellants' suggestion that in referring to the urban fringe area the Council were in fact referring to the urban area is too narrow an interpretation. The urban fringe is a recognised policy definition which refers to the area between the built up area and the South Downs National Park. It is in this context that Members would have understood the use of that phrase. The local area includes the townscape of the built up area, the urban fringe location and the directly adjacent South Downs National Park. That is not stretching the interpretation of those words and in fact to conclude otherwise would be to give them too narrow a construction.
 15. I am satisfied that the term 'design' has a wide interpretation and the matters addressed by the Council fell within that broad definition or interpretation. I am satisfied that the prevailing character and local area is made up of elements including the urban area, the open field of the appeal site and the adjacent South Downs National Park.
 16. I am therefore satisfied that the reason for refusal does identify the harm and the aspects of the development that lead to that harm, and those matters which are of concern to the Council and which conflict with the development plan. The reason for refusal is not therefore unreasonable and a full award of costs is not justified on this ground.
 17. The Council's principal witness on these matters was Ms Murphy. Her evidence sought to identify those elements of the prevailing character that were appropriate to reflect in any development and to demonstrate how the development would be counter-posed against those. Ms Murphy is an experienced professional and qualified to address matters related to urban design. The bulk of her evidence focused on such matters and addressed the matters related to how the scheme design should be considered in the context of the surroundings. Whilst not a landscape professional the assessment that was undertaken was provided in terms of urban design issues and not presented as an objective landscape assessment. These matters were in any case agreed in the Statement of Common Ground. I am therefore satisfied that the Council produced reasonable evidence to substantiate its reason for refusal and did not rely on vague or generalised assertion about the development's impact.
 18. Matters of design, appearance, character etc. and the extent to which they are compatible with or are detrimental to the surroundings are subjective and heavily influenced by individual opinion, including professional opinions. Whilst I have concluded that the scheme would not result in material harm and allowed the appeal that does not mean to say that the evidence from Ms Murphy was ill conceived or wrong. It simply means that I gave the appellants' arguments greater weight and was persuaded by those arguments. That does

not mean that it was unreasonable for Ms Murphy to adopt and argue a different point of view.

19. The evidence of Ms Murphy addressed the design and impacts of the development and, given the broader interpretation of the reason for refusal, which I do not see as unreasonable, it was legitimate for her to do this. I do not find that the scope of Ms Murphy's evidence went beyond the reason for refusal and therefore the Inquiry was not prolonged by introducing new reasons for refusal.
20. The Statement of Common Ground covered in reasonable detail the areas of agreement in terms of landscape and, in this regard, the Council fully engaged with the appellant. This would have assisted in clarifying the areas of dispute and therefore the areas on which the appellant would need to focus its evidence. Whilst Ms Murphy's responses to the appellants' requests for clarification did not add much to the understanding of the detail in the reason for refusal, the reason was not so poorly drafted that the appellant could not make an informed and reasonable interpretation of the matters of concern. I am not persuaded that the Council failed to co-operate with the other party or that it behaved unreasonably in this regard.
21. For these reasons I conclude that the Council did not act unreasonably. In these circumstances it is not necessary to consider the question of unnecessary or wasted expense.
22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Kenneth Stone

INSPECTOR