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## Costs Decision

Inquiry opened on 24 April 2018

Site visit made on 27 April 2018

**by Lesley Coffey BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 June 2018**

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### **Costs application in relation to Appeal Ref: APP/Q1445/W/17/3177606 Land South of Ovingdean Road, Brighton BN2 7AA**

- 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 Lightwood Strategic for a full award of costs against of Brighton & Hove City Council.
  - The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for the construction of 45 one, two, three, four and five bedroom dwellings with associated garages, parking, estate roads, footways, pedestrian linkages, public open space and strategic landscaping. New vehicular access from Ovingdean Road and junction improvements.
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### **Decision**

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

### **The submissions for Lightwood Strategic**

2. The application for costs was made in writing in June 2017 and supplemented at the inquiry. In summary, the appellant states that the application was refused contrary to officers' advice and disregarded the findings of the Inspector at the time of the previous appeal.
3. The Council failed to review its case in a timely manner. The decision not to defend the appeal was made February 2018, and this did not leave sufficient time for a further application to be determined prior to the inquiry. As a consequence it was necessary for the appellant to defend the appeal and present evidence.

### **The response by Brighton and Hove**

4. The Council responded in writing.

### **Reasons**

5. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
6. PPG paragraph ID: 16-047-20140306 sets out the type of behaviour that may give rise to a procedural award of costs. The examples include withdrawing a reason for refusal. Following a review of its case, the Council withdrew two of the reasons for refusal, namely that in relation to air quality and the effect of

the proposal on the setting of Ovingdean and Rottingdean Conservation Areas and the gap between the settlements. These reasons for refusal were withdrawn before the appellant's proofs of evidence were due. Proofs of evidence in relation to these matters were not submitted to the inquiry. I therefore do not consider that the withdrawal of these reasons for refusal was unreasonable, or gave rise to any wasted expense.

7. PPG paragraph ID: 16- 049-20140306 sets out the circumstances where a substantive award of costs may be made against a local planning authority. These include failing to review their case promptly following the lodging of an appeal against refusal of planning permission.
8. Statements of case were exchanged at the beginning of December. A case conference took place in early January. Following the case conference the matter was reported back to Planning Committee at the beginning of February, advising that reasons 2 and 3 should be withdrawn and the planning balance should be reassessed. The Council's decision not to defend the appeal was reported to the appellant the same evening.
9. The Council's case conference was held in a timely manner following the exchange of statements of case, as was the referral back to committee. The decision made by the committee was a matter of planning judgement. Having regard to the need to comply with the democratic process, I am doubtful that the Council could have either withdrawn the reasons for refusal, or decided not to defend the appeal, at an earlier stage in the appeal process.
10. The fact that there was insufficient time for a further application to be submitted and determined and thereby avoid an appeal does not represent unreasonable behaviour on the part of the Council. In the circumstances of this case the appeal would have still been necessary, or alternatively the appellant could have withdrawn the appeal pending the outcome of a further application. I therefore do not find the Council's behaviour to be unreasonable, or have caused the appellant to incur unnecessary expense.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Lesley Coffey*

INSPECTOR