
Costs Decision

Site visit made on 3 July 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Costs application in relation to Appeal Ref: APP/Q1445/W/18/3219111 Adjacent 2, Addison Road, Hove, BN3 1TN

- 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 J Sinclair of Kalmax International 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 demolition of car mechanics (B2) and car rental centre (Sui Generis) and erection of three-storey mixed use building (B1 and A1 / D2) fronting Addison Road and 2no houses and 2no flats (C3) fronting Melville Road.
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Decision

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

Reasons

1. 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.
2. In this case the planning application was validated on 29 August 2018. This followed the refusal of a previous planning application, and following pre application advice prior to the new application being submitted. The target decision date was 24 October 2018.
3. On the evidence before me no substantive update was provided prior to the target decision date. The Council telephoned the agent on 13 December 2018 advising that the application was likely to be refused. Whilst a meeting was requested by the appellant, none took place.
4. Planning Practice Guidance states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit¹. In this case, whilst the applicant was updated regarding the Council's view of the planning application, no explanation appears to have been provided as to why the application was delayed. Accordingly, having regard to PPG, I agree that this amounts to unreasonable behaviour.

¹ Paragraph: 048 Reference ID: 16-048-20140306

5. The question then arises as to whether the unreasonable behaviour resulting from the lack of explanation for the delay led to unnecessary or wasted expense in the appeal process. However, in responding to the appeal, the Council provided a putative reason for refusal and a detailed analysis of the proposal. The differences between the parties are fundamentally matters of planning judgement regarding the acceptability of the proposed design of the scheme. The planning appeal decision makes clear that the Council did not delay development that should clearly be permitted.
6. Consequently, it is likely that the appeal process would have needed to be engaged in order to resolve this dispute. Accordingly, whilst the Council acted unreasonably in failing to explain why there was a delay, the appeal could not have been avoided and there was no wasted expense. Consequently, an award of costs is not justified.

Neil Holdsworth

INSPECTOR