



Costs Decision

Site visit made on 9 July 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2019

Costs application in relation to Appeal Ref: APP/Q1445/D/19/3223869 55 Coleman Street, Brighton, BN2 9SQ

- 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 Karl Bray for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of the Council to grant planning permission for a two-storey extension.
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Paragraph 30 of the government's Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appeal follows the refusal on 1 February 2019 of an application made on 3 October 2018 for the erection of a 2-storey rear extension. The application was for a revised scheme following the refusal of a previous application for the erection of a 2-storey rear extension. Planning permission was refused for the revised proposals for two reasons; in summary, the loss of amenity to neighbouring occupiers, particularly those of 56 Coleman Street, and a harmful impact on the appearance of the host property and wider terrace.
4. The applicant contends that the Council raised no concerns regarding an alleged impact on the occupiers of No. 56 in the refusal of the previous application and that the Council did not indicate that a new reason for refusal was going to be introduced, despite attempts to discuss the matter. The applicant considers this unreasonable and contends that, as a consequence, additional costs have been incurred in preparing his Statement of Case for this appeal.
5. In fact, both the Planning Officer's Report and the decision notice refer to 56 Coleman Street. In its rebuttal of the application for costs, the Council explains that this was an unfortunate error but that it was clear from the Report that it meant No. 54. The Council has therefore essentially sought, through its rebuttal, to withdraw its second reason for refusal and substitute, in part, a corrected version for this appeal. These are identified in the PPG as examples of unreasonable behaviour which may result in an award of costs.
6. I am not persuaded by the Council's argument that it was clear from the Planning Officer's Report that it meant No. 54; the Report consistently refers to No. 56 and so it is logical (albeit erroneous) that there is a specific reference in the decision notice to

- 56 Coleman Street. The applicant was entitled to take the Report and decision notice at face value. It is understandable that, whilst surprised that this matter had not been mentioned previously, the applicant genuinely believed the Council to have concerns about the effects of the proposed development on the living conditions of the occupiers of No. 56.
7. As a result of the Council's error in referring to No. 56 rather than No. 54, the applicant's Statement of Case deals in paragraphs 4.20 - 4.32 with the effect of the proposed development on the occupiers of No. 56, both in respect of being overbearing and loss of light. The Council's admission at a late stage in this appeal that its reference to No. 56 was an error on its part means that this was unnecessary work and consequent expense. The Council's unreasonable behaviour has therefore directly caused the applicant to incur unnecessary and wasted expense in the appeal process.
 8. The applicant also contends that the Council behaved unreasonably in not allowing an office meeting to discuss the application, which could have avoided the need for an appeal or at least narrowed the issues to be considered in the appeal. The applicant has attached copies of email correspondence with the Council in which the applicant makes it clear that he wishes to discuss the merits of the proposed development and any concerns with the Case Officer and refers to a request for a meeting.
 9. However, the Case Officer confirms in her response to one of the applicant's emails that she did discuss the application with the applicant's architect, and I have no evidence that a specific request for an office meeting was declined. I have no evidence either of the Council declining to discuss the reasons for refusal prior to the lodging of the appeal. I am therefore not persuaded that the Council behaved unreasonably in its engagement with the applicant about the proposed development.
 10. In any event, I am not persuaded that a meeting would have resolved the Council's concerns, such that it would have granted permission for the proposed development thus avoiding the need for the appeal. Neither am I convinced that a meeting would necessarily have prevented the Council's erroneous reference to 56 Coleman Street in the Planning Officer's Report and the decision notice, thus narrowing the issues to be considered. I consider this to be more likely to be a straightforward (although unreasonable) mistake rather than being due to an actual misunderstanding of the site or proposed development that would have been clarified in a meeting.
 11. In the Statement of Case the applicant addresses two alleged errors by the Council; the description in the Decision Notice of a "small terrace of properties" and the statement in the Planning Officer's Report that the proposal is "situated adjacent to both boundaries". However, 'small' need not be a reference to the length of the terrace and I therefore consider this phrase to be ambiguous rather than manifestly inaccurate or untrue and that its use does not amount to unreasonable behaviour by the Council.
 12. It is clear that from the Planning Officer's Report that it was understood that the second storey element of the proposed development would not extend to both boundaries but that, even so, it was considered that the revised proposal would be overbearing to No. 56 (or, rather, No. 54). However, the use of the phrase 'being situated adjacent to both boundaries' is manifestly inaccurate and introduces uncertainty as to whether the Planning Officer was considering the effects of a full width second storey extension or the set-back extension in coming to the conclusion that it would cause a significant loss of light to the rear garden of No. 56 (No. 54).
 13. This leads on to the applicant's contention that there are numerous examples of vague, generalised or inaccurate assertions about the impact of the proposed development, unsupported by any objective analysis, in the Planning Officer's Report. Furthermore, the applicant contends that the Council unreasonably refused planning permission for the proposed development and, as a result, the applicant was put to unnecessary and

wasted expense through having to engage a professional to submit the appeal and prepare a very detailed statement of case.

14. The reference to 'amenity' in the Council's second reason for refusal is vague and generalised. I have noted above that the reference to the proposed extension "being situated adjacent to both boundaries" is inaccurate and leads to uncertainty as to the basis for the Council's conclusions regarding overbearing and the loss of light in respect of both No. 54 and No. 56. I consider that this amounts to unreasonable behaviour by the Council. Whilst it is ultimately for the applicant to decide whether to submit an appeal and appoint a professional adviser to handle the appeal process, I can understand the applicant's need to do so in this case.
15. I consider that the Council's officers were entitled to conclude that, in their professional opinion, the proposed development would be unacceptable in respect of design and appearance. This itself is not an unreasonable conclusion and it is the conclusion I reach in my decision on the appeal in respect of the effect on the terrace of which the appeal property is part. Accordingly, I do not find that the Council behaved unreasonably in refusing to grant permission for the proposed development.
16. However, I find the Council's reason for refusal in respect of the effects of the proposed development on the living conditions of the occupiers of the neighbouring properties to be less than precise. This has caused the applicant to incur unnecessary and wasted expense in the appeal process.

Conclusion

17. The Council has acted unreasonably in failing to identify the correct property in respect of its issue relating to living conditions and in failing to be precise in its reason for refusal relating to this issue. This has directly caused the applicant unnecessary and wasted expense in the appeal process and merits a procedural and substantive award of costs. However, I find that the Council did not behave unreasonably otherwise, including in its decision to refuse planning permission.
18. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal relating to the alleged loss of amenity to neighbouring occupiers, is justified.

Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Brighton & Hove City Council shall pay to Mr Karl Bray the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal which concerned alleged loss of amenity to neighbouring occupiers.
20. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Martin Small

INSPECTOR