
Costs Decision

Site visit made on 16 June 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 July 2020

Costs application in relation to Appeal Ref: APP/Q1445/W/19/3243168 Villas Fleur, 7 Tongdean Road, Hove BN3 6QB

- 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 & Mrs W & A Sancha 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 existing dwelling and the erection of a 5 bedroom house, pool and garaging including landscaping.
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Decision

1. I refuse the application for an award of Costs.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306). The appellant has split the Application into 3 parts and the Council responded under the same headings:

Failure to Cooperate

3. The appellant states that the application was before the Council for the prescribed 8 week period, plus 6 months and that no real feedback was received, leaving the appellant no choice other than to appeal. Paragraph 47 of the National Planning Policy Framework states that decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing; no such agreement was requested or given.
4. It appears that a previous application was to be recommended for approval but was withdrawn after being referred to a different Council Officer. The appellant cites various matters that were the subject of a Freedom of Information request or were referred to in a Report but not made available to the appellant. However, although the Council conceded the point, a Freedom of Information request does not incur expense.
5. Alleged failings such as these are not a matter for the Costs regime and could be addressed through other channels. An appeal against non-determination could have been made at any time on expiry of the statutory period and any

expense attributable to a delay in obtaining permission or carrying out development is not covered by an Award of Costs.

6. The Guidance makes clear at Paragraph: 033 Reference ID: 16-033-20140306 under the question '*can costs be claimed for the period during the determination of the planning application?*' that the answer is 'no' as costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding. Behaviour and actions at the time of the planning application can however be taken into account in the Inspector's consideration of whether or not costs should be awarded and that will be looked at in the Conclusions to this Costs Decision.

Failure to Provide Evidence

7. The Council accept that there was an error in the supply of evidence from the District Valuer's Service and have apologised. That evidence was available to the appellant and the Inspector prior to determination of the accompanying Appeal Decision although the appellant queries its completeness. Policy HE8 requires consideration of value and costs to refurbish, in order to support the demolition of a building which makes a positive contribution to the character and appearance of the Conservation Area.
8. As stated by the appellant, the lack of this evidence might have disadvantaged the appellant in putting the case at appeal, notwithstanding that the Appeal Decision did not find such a positive contribution and therefore did not need to address the evidence. The circumstances are unfortunate, and may border on the unreasonable, but in the Costs regime, that has to be accompanied by a party incurring unnecessary or wasted expense in the appeal process.
9. The appellant would have had to address the possibility of the Appeal Decision finding that the building did make a positive contribution to the character and appearance of the area and that the Inspector would need to weigh the matter of value and refurbishment. The appellant would therefore have had to address the evidence at some stage and the costs would have been the same.

Introduction of New Evidence

10. In an appeal against the failure to determine an application, it follows that the Council's full case may not be apparent at the time of making the appeal, as deliberations were ongoing. It is however for the Council to make clear the putative Reasons for Refusal after which it would be wrong to add further issues. If that added an issue that had not previously been referred to, that was the correct point at which to do so.
11. That process was followed in this case and the appellant needed to rebut each of the issues then identified as objections to the scheme. Any informal discussions are not the Council's final and formal decision and any resulting expectations should not be relied upon. The Council acted reasonably in identifying areas of objection at appeal and the appellant was able to address each area without wasted expense.

Conclusions

12. Appeals against a failure to determine an application within the required timescale can lead to a further passage of time before a Decision and will put

an appellant to expense in rebutting what then become clear as the Council's formal objections to the scheme.

13. There had been failings on the part of the Council and these have been acknowledged, but they do not appear to reach the threshold of being unreasonable and no expense was likely to have been wasted, so that the circumstances described in the Planning Practice Guidance have not been demonstrated

S J Papworth

INSPECTOR