



Costs Decision

Site visit made on 21 July 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2020

Costs application in relation to Appeal Ref: APP/Q1445/W/20/3248037 4 Pembroke Gardens, Hove, BN3 5DY

- 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 Ms Julia Hamblin for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for a proposal originally described as change of use of existing building from two existing flats to four proposed flats and associated external alterations.
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Decision

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

Reasons

2. Planning Practice Guidance ("PPG") advises that parties in planning appeals and other planning proceedings normally meet their own expenses. However, 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. PPG confirms that unreasonable behaviour may relate to procedural or substantive issues.

Substantive issues

3. Failure to correctly apply planning balance. The officer report identifies that there is a shortfall in housing supply within the City. It goes on to say that when considering the planning balance in the determination of planning applications, increased weight should be given to housing delivery in line with the presumption in favour of sustainable development. As such, the Council did acknowledge the benefits of additional housing in light of its housing shortfall. It was aware of the presumption in favour of sustainable development when making its decision.
4. Paragraph 11 d) i) of the Framework states that permission should not be granted where the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Having had regard to the policy on heritage assets set out in paragraph 196 of the Framework, the Council concluded that there were no public benefits that outweighed the less than substantial harm to the designated heritage asset.
5. In doing so it applied the appropriate balancing exercise, as set out in the Framework. As a clear reason for refusing the application existed, the Council

- did not undertake the weighted balance set out in paragraph 11 d) ii) of the National Planning Policy Framework ("the Framework"). Given its findings on heritage impact this was the correct approach. It did not act unreasonably, in this respect.
6. Misapplication of Design Guidance. Reference is made at various points throughout the Council's submissions to the supplementary planning document SPD 12 'Design guide for alterations and extensions' (2013). This guidance is clearly a potential material planning consideration. The weight that should be given to it is a matter for the decision maker taking in to account the circumstances in any given case.
 7. In this case the guidance in this document was of limited relevance to my deliberations on the acceptability of the roof and elevational alterations. These were primarily appraised with reference to the special character of the Conservation Area, having had regard to the submissions of the appellant on this point. However, this is a matter of planning judgment. The Council did not act unreasonably in referring to this document.
 8. Standard of Accommodation. The Council's concerns regarding the standard of living accommodation in the top floor flat were discussed in depth in the officer report and reflected in its reason for refusal. These go beyond the question of whether the proposed unit is of a sufficient floor area. It will be clear from the appeal decision that I share the Council's concerns regarding headroom and outlook. The Council fully substantiated its position in relation to this issue and there is no evidence of unreasonable behaviour, in this respect.
 9. Consistency in decision making. The Council granted planning permission for a large-scale redevelopment to the rear of the appeal site. However, this is outside of the Conservation Area. Its impact is therefore of a different nature, and the appeal proposal raises questions about the acceptability of partial demolition in a Conservation Area which were determinative in this case. The Council did not act in an inconsistent manner in this respect. This is not evidence of unreasonable behaviour.
 10. Inadequate consideration regarding planning conditions. A number of minor design changes were tabled with the appeal and accepted for consideration. These could have potentially been matters that could have been addressed by planning condition, were the Council to have approved the original scheme. However, this would not have made the proposal acceptable in planning terms given the more fundamental concerns regarding living conditions and heritage impact. As such, the Council did not act unreasonably in failing to grant planning permission subject to conditions.

Procedural Issues

11. The officer report makes reference to the desirability of more information, for instance on the internal ceiling heights associated with the second floor flat. However, this was not requested. The Council do not appear to have had much interaction with the Applicant, in the time it was considering the planning application.
12. Despite this, the Council made a reasonable assessment of the proposal based on the plans and submitted information. It clearly took the view that the proposal was unacceptable in principle due to the inadequate layout of the top

floor flat together with concerns about heritage impact. The reasons for refusal and officer report explain clearly the perceived deficiencies with the proposal, and the conflict with the development plan and national planning policy.

13. In these circumstances the Council was not under any formal obligation to request amendments to the proposal. It was however under an obligation to issue a decision within the appropriate timeframe set out in legislation, which it clearly sought to meet. The Framework requires that decisions on planning applications should be made as quickly as possible. The actions of the Council were not, in this respect, inconsistent with the requirement in the Framework to act in a positive way.
14. Reference is made to delays in uploading information to the Council's website, including the heritage officer comments. However, these were made available around the time of its decision. The actions of the Council did not adversely affect the ability of the Applicant to make their case in the appeal, in this respect. This is not evidence of unreasonable behaviour.

Conclusion

15. In conclusion, I cannot agree that the Council has acted unreasonably in any aspect of this case. The Applicant was not put to unnecessary or wasted expense in pursuing the appeal. An award of costs is not justified.

Neil Holdsworth

INSPECTOR