
Costs Decision

Site visit made on 5 October 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Costs application in relation to Appeal Ref: APP/C3810/W/20/3245777 77 Aldwick Road, Bognor Regis PO21 2NW

- 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 Simon Royall for a partial award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for part change of use of ground floor and formation of a first floor rear extension to create 2 No. self-contained studio flats with associated refuse/ recycling & cycle store.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The appeal application (the 2019 application) followed a previous refusal of a proposal for a larger development (the 2018 application).
3. The Council's reason for refusal cites the absence of a BRE assessment by a qualified assessor as a reason for refusal. I understand that there is no policy or supplementary guidance that specifically requires detailed BRE assessments. The Council also reached a decision on the 2018 application, where there were also concerns about sunlight and overshadowing, without such an assessment. I have not needed one to reach my conclusions on the appeal.
4. However, the appellant has not produced a BRE assessment to support the appeal submissions. While there may have been expense incurred in justifying the absence of the assessment, some form of analysis of effect was required to demonstrate the acceptability of the scheme. I, therefore, conclude that this matter has led to no wasted expense in the appeal process.
5. The 2018 application was refused due to alleged harm to living conditions in respect of Nos.73-75 and 79 Aldwick Road and No.10 Stocker Road. The 2019 application was refused due to alleged harm on 75-79, therefore, including No.77, and also Nos.14/16 Stocker Road, as well as No.10. This was despite the development in the 2019 application being smaller with less effect on No.77, and including the same rear facing windows towards Nos.14/16.
6. The Council's appeal statement then goes further to explain potential harm to outdoor living spaces at Nos.75, 77 and 79. This matter is not referenced in the

reasons for refusal of either the 2018 or 2019 applications, where harm is said to relate to effects on windows. However, the issue is discussed in the officer report so it was not a new issue at appeal statement stage. Along with the other effects on No.77 though, it is a new issue compared to the 2018 application, which is unreasonable.

7. I understand that the Council requested a drawing showing sightlines to Nos.14/16. However, the proposed relationship is abundantly clear following a site visit and the absence of such information does not translate to harm. I understand that the officer dealing with the 2018 application may have been concerned about the relationship to Nos.14/16, and the distance to them is mentioned in the reason for refusal. However, that reason is clear that the alleged harm to the rear would arise only to No.10. While there is some commonality in the reasons for refusal, the introduction of harm to additional properties is unreasonable behaviour.
8. The commonality in some of the reasons for refusal between the 2018 and 2019 schemes means that an appeal could not have been avoided altogether. However, in respect of the matters detailed above where new issues were introduced, the appellant has been put to unnecessary expense in the appeal process.
9. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Arun District Council shall pay to Mr Simon Royall, the costs of the appeal proceedings described in the heading of this decision **limited to** those costs incurred in defence of the effects on No.77 Aldwick Road, the outside spaces of Nos.75-79 Aldwick Road, and Nos 14/16 Stocker Road, and the associated submissions in respect of this costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Arun District 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.

M Bale

INSPECTOR