

Costs Decision

Site visit made on 21 January 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Costs application in relation to Appeal Ref: APP/Q1445/W/20/3260657 Brighton & Hove City Council

- 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 Lekan Saromi for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for roof alterations for form 1 studio and 1no. 1bedroom flat.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant's claim may be summarised, in reference to PPG, by the Council (a) 'preventing or delaying development which should clearly be permitted', (b) by making 'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis' and (c) by refusing to enter into discussions or to provide reasonably requested information to narrow the issues being considered at appeal.
4. It will be evident from the main decision that I consider there to be harm in relation to the impact of the scale of the rear dormers on the character of the area and conflict with adopted planning policies, but that harm to be limited. This is a matter of planning judgement as the dormers would be larger than those previously consented. The Council were obligated to make that judgement and then to weigh any harm in relation to all other relevant considerations. The Council has not prevented or delayed development which should clearly have been permitted.
5. The second claim point on vague assertions relates to both refusal reasons. The Council's reference to "*excessive size and width*" in the first reason is explained in the officer report and its reasoning confirmed in the Council's statement in relation to the width of the rear dormers relative to the width of the rear roofslope. The analysis was supported by reference to relevant policies.
6. The second refusal reason was amended during the appeal process with the Council belatedly accepting that the floor area for unit 1 as a whole would be

acceptable but maintaining that the unit's bedroom size would not be. On both issues, the margin to a deemed acceptable floor area by reference to the Nationally Described Space Standards appeared to be very small. The Council has exercised a rigidity in adherence to a standard which it states it has not even adopted, and claims resultant floor area would be contrary to a saved policy. But its assertions are unsupported by any objective analysis to substantiate the refusal reason. The Council has not set out any examination of how harm would arise from the resultant size of the flat or bedroom as shown on the plans. Nor has it explained how such small shortfalls would result in material nuisance for future occupiers and be contrary to the policy.

7. On the third claim point, there has been considerable dialogue during the appeal process on the accuracy of claimed measurements for floor areas on the plans. As the differences in the claimed figures are small it is plausible that they could have arisen as margins of error in calculations. Such an acceptance occurred in the appeal process in relation to the overall size of unit 1 but not in relation to its bedroom. This has prolonged dialogue on the accuracy of the measurements for the length of the appeal process. Such small differences in measured or calculated figures could reasonably have been discussed during the planning application process, particularly as the Council have struggled to point to any substantive harm arising from those differences. This is a case when a more helpful approach involving dialogue with the applicant on the differences would probably have resulted in issues considered at appeal being narrowed, and so reducing the expense associated with the appeal.

Conclusion

8. My findings are that the Council behaved unreasonably in relation to the second reason for refusing the application. PPG states an award of costs may be made against a Council in relation to "*failure to produce evidence to substantiate each reason for refusal on appeal*". Furthermore, the absence of dialogue to clarify minor differences in floor area calculations has led to unnecessary expense in the appeal process in preparation of a longer appeal statements on a greater range of issues than would otherwise have been necessary. A partial award of costs, to cover the expense incurred by the applicant in relation to the second reason for refusal, is justified.

Costs Order

9. 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 and Hove Council shall pay to Mr Lekan Saromi, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the appeal in relation to the second reason for refusing the appeal proposal. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
10. 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.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR