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## Costs Decision

Site visit made on 5 May 2021

**by H Miles BA(hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 JUNE 2021**

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### **Costs application in relation to Appeal Ref: APP/Q1445/W/20/3271774 55 Centurion Road, Brighton**

- 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 Mishbec Limited for a full award of costs against Brighton & Hove City Council.
  - The appeal was against the refusal of planning permission for change of use from dwellinghouse (C3) to flexible use as 5no bedroom small house in multiple occupation (C4) or single family dwellinghouse without complying with conditions attached to planning permission Ref BH2019/03209, dated 30 March 2020.
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### **Decision**

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

### **Reasons**

2. An award of costs may be allowed where it is found that a party behaves unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellants case is that the Council has
  - imposed, and refused to remove, conditions that are not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects,
  - failed to produce substantive evidence to support this position at appeal,
  - made vague general or inaccurate assertions about a proposal's impact,
  - failed to determine cases in a similar manner
  - applied pre-commencement conditions without notifying the appellant.
4. It can be seen in my main decision that condition 5 was not reasonable. As such, the failure to remove this condition is unreasonable behaviour. Condition 7 can be amended to meet the tests and is necessary, therefore the refusal to remove this is not unreasonable. The reasons behind the imposition of condition 8 meet the tests. However, an amendment to the Traffic Regulation Order can, and I am assured will, be undertaken the Council's rights under its highway, not planning, powers. Therefore, the condition is unnecessary. However, this was not put to the Council in the planning application to remove the condition and therefore it has not refused to remove the condition on this basis. Consequently, this is not unreasonable behaviour.
5. This partial unreasonable behaviour on the part of the Council has, as a consequence, lead to the submission of an appeal against the refusal to remove

- this condition. And therefore, to the appellant incurring unnecessary or wasted expense in the appeal process with regard to the removal of condition 5 only.
6. There are a variety of views relevant to this appeal, including those of statutory consultees, neighbours, the planning officer and Members. It is not unreasonable for Members to reach a different conclusion to officers and consultees. In this case the evidence submitted by the LPA is sufficiently detailed with regard to the reasons for the conditions, and the refusal to remove them. As such adequate evidence to substantiate the reason for refusal has been provided and the assertions are not vague or unsupported by an objective analysis.
  7. In my main decision I consider the cases put to me in relation to small HMOs which have not included soundproofing conditions and for changes of use to C4 which have not included a condition restricting on street parking permits. It can be seen that I am not persuaded that these cases are comparable. Consequently, it has not been demonstrated that the Council has failed to determine cases in a similar manner.
  8. The main decision explains that pre-commencement conditions were imposed without the written agreement of the applicant. This is unreasonable behaviour. However, the purpose of such written agreement is to prevent unnecessary delay of development, not to debate the substantive requirements of the conditions. Therefore, such a notification would not have avoided the appeal. As such, this has not led to wasted expense in the appeal process.
  9. Consequently, I have found a costs award to be justified in relation to the imposition, and refusal to remove, a condition that is not reasonable, although I do not find it is justified on any other grounds. It is therefore only the costs incurred in the appeal process with regard to the removal of condition 5 that are awarded.
  10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in relation to condition 5 and that a partial award of costs is justified.

### **Costs Order**

11. 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 Brighton & Hove City Council shall pay to Mishbec Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal with regard to the removal of condition 5; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Brighton & Hove City 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.

*H Miles*

INSPECTOR