
Costs Decision

Site visit made on 11 October 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Costs application in relation to Appeal Ref: APP/Q1445/W/21/3271573 Stowford, Withdean Road, Brighton BN1 5BL

- 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 Christopher Liu for a full award of costs against Brighton and Hove City Council.
 - The appeal was against a refusal of the Council to grant planning permission for erection of two storey rear extension to create 5no residential units (1no 2 bed, 3no 1 bed and 1no studios) with associated parking. Removal of existing chimney, without complying with a condition attached to planning permission Ref BH2017/03342, dated 29 November 2018.
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Decisions

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The applicant claims that the Council acted unreasonably by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. This is on grounds which I summarise as:
 - (a) failing to take into account the fact that the approved scheme couldn't be implemented and that the Highways Authority (HA) had no objection to the propose alternative; and
 - (b) failing to take permitted development rights into account.
4. In relation to Ground (a), the PPG makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal. Behaviour and actions prior to this can however be taken into account if relevant.
5. In this regard the Council could presumably have established more clearly the extent to which the originally approved scheme was capable of being fully implemented when that scheme was assessed. The Council is both the local planning authority and the HA. The fact that the approved scheme could not be implemented did not however provide a basis for the appellant to then implement a different scheme. Nor did a separate condition requiring

construction of the crossover prior to first occupation, which itself appears to have been breached. Ultimately, it was these actions which directly led to the application subject of the appeal.

6. Whilst the HA may have provided permission in principle for a crossover in the location within which an access has been formed, this information was only submitted at appeal. Notwithstanding the fact that the Council is the HA, this information could not have been taken into account when the application was determined. In any case, both the Council and I consider that the access fails to comply with the conditions attached to the permission in principle. Ground (a) therefore fails.
7. The Council has made no response to Ground (b). This was not otherwise a matter addressed within the officer report or resolved within the Council's appeal statement. Be that as it may, permitted development rights apply to lawful operations and uses, being those which have planning permission. The case before me however involves a development which has been implemented at variance with a planning permission. It was indeed the purpose of the application subject of the appeal to regularise the situation, including the parking layout defined by the fence. Here the Council was clearly within its rights to assess the scheme before it, attaching whatever weight it saw fit to material considerations. Though in doing so it may have omitted any reference to permitted development rights, given the above, these do not present themselves either as an obviously relevant consideration, or one capable of attracting weight. Ground (b) therefore fails.
8. I find therefore that the Council did not act unreasonably on the Grounds claimed by the applicant, and that consequently the applicant did not incur unnecessary or wasted expense in the appeal process.

Conclusion

9. For the reasons set out above, I find that the applicant's claim for an award of costs should be dismissed.

Benjamin Webb

INSPECTOR