

Appeal Decision

Site visit made on 1 November 2021

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3RD December 2021

Costs application in relation to Appeal Ref: APP/Q1445/W/21/3272911 25 Preston Park Avenue, Brighton, BN1 6HL

- 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 Damian Frizzell against Brighton & Hove City Council.
 - The appeal was made against the refusal of an application, BH2020/02943, which sought planning permission for the erection of 2no two storey dwellinghouses (C3) in rear garden with associated landscaping; demolition of existing garage and erection of a three storey rear extension & conversion of existing house including excavation of basement to provide 7no flats (C3) and associated alterations.
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Decision

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

Reasons

2. Planning Practice Guidance (guidance) advises that, irrespective of the outcome of the appeal, costs may only 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 Appellant argues that there has indeed been unreasonable behaviour by the Council. In short, and amongst other matters, it is put that the proposal could and should have been permitted but that the Council, and most particularly the Conservation Officer, displayed marked inconsistency when compared to other nearby schemes. It is also put that the authority was responsible for communications delays, lack of action on negotiations, confusion over involvement in assessment by the District Valuer Service, repeated hold-ups generally, missing deadlines and poor service procedurally. The case is made that given the merits of the scheme, with proper Council handling, the need for a planning appeal could have been avoided.
 4. The Council feels the Appellant gives too much focus to the merits of the scheme as *he* sees them, whilst the authority can decide on material considerations and weight to be given. This was a fresh application for the site and differed from others in the street; the case is made that new analysis is justified. The Council does acknowledge some delays in processing due to other pressures, a busy office, and a decision well down the line to bring in the District Valuer. However, it does point out that the Appellant was given 'early warning' of the issues of concern and could have amended the application accordingly. The Council states the reasons for refusal are clear, it felt it could not approve the proposal as submitted, and it was the Appellant's choice to appeal and not amend the scheme.
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5. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs.
6. I appreciate an appeal process can be time and fee consuming. However, the Council has given reasons for the judgement it reached and the decision notice is sufficiently lucid. It is clear and sets out unequivocally the concerns of the Council and the Appellant choose to challenge this. The reason rightly refers to the applicable policies and clearly stems from the report. The documented decision process enables me to determine that development plan matters had been sufficiently considered and impacts had been weighed and analysed.
7. The delays in reaching the decision were regrettable but not completely extraordinary or without reason on this significant proposal and in the local and national climate of 2020/21. I hope that the Council will now operate more efficiently but to my mind those delays, regrettable as they were, would not on their own warrant an award of costs. Furthermore, although not ideal the Appellant could, of course, have appealed earlier against non-determination.
8. On the matter of the overall decision, as it happens, I disagree with the conclusions on character and appearance reached by the Council. However, I would nevertheless defend the Council's wording and assertions in the round as not being unsubstantiated or unreasonable and its actions throughout the process as not being irrational. In addition, even beyond the normal deadlines applicable to the appeal process I had not, until very late in the day, received a final S106 Agreement. Just as the Council felt necessary at the application stage, to my mind it was an essential part of the planning proposal in this instance.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR