

Costs Decision

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Costs application in relation to Appeal Ref: APP/Q1445/W/22/3292319 203 Dyke Road and 15 Caburn Road, Hove, BN3 6EF

- 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 Mrs L Harding for an award of costs against the decision of Brighton & Hove City Council.
 - The appeal was made against the refusal of an application, Ref BH2021/04025, which sought planning permission for the conversion of 15 Caburn Road from 11 person House in Multiple Occupation to 12 person House in Multiple Occupation (and retention of 203 Dyke Road as an 8 person HMO).
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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. The case is made that there no substantiation for refusing the development with inaccurate assertions about the proposal's impact, and little objective analysis. It is underlined that the decision was unreasonable. This is because firstly the main policy on which the Council base their objection (DM7) is not part of the adopted Development Plan, and hence carries only "limited weight". Secondly, no residents objected to the application or appeal; indicating a lack of concern to present amenity and communal space provision. Thirdly, the Council has a diminishing housing land supply position, and a dire need for affordable and good quality open-market residential accommodation.
 4. The conclusion reached by the Appellant is that they have incurred unnecessary expense in instructing a professional planning consultancy to compile an appeal. It is put that the appeal would not have been necessary if the LPA had positively dealt with the application.
 5. The Council has not made any submission in relation to the Costs Application.
 6. 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.
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7. I recognise that an appeal process can be time and fee consuming. However, in reaching its decision to refuse the application it does seem to me that the Council fairly and comprehensively considered the issues. While there is mention of emerging Policy DM7 in the Officer Report and on the Refusal Decision there is far from total reliance on that in terms of reaching a conclusion. The Officer Report looks at square metre figures *along with* the sense of space (or otherwise) within the kitchens, the lack of scope for seating and the absence of outlook or natural light.
8. The Decision was issued in a fairly timely fashion, bearing in mind the Christmas break. The Appellant was aware of the Council's concerns from earlier planning application discussions and outcomes and thus the decision should not have been a surprise. The matter of housing land supply is not explicitly addressed by the Council in the original papers but I think it would be fair to assume that decision makers in the Council are aware of the position and seek to increase supply where reasonable. I am not convinced that, in any circumstance, silence from residents within or beyond a scheme can necessarily be taken to read as satisfaction or support. There can be many reasons why people do not engage in the planning system and in any event the procedure aims to protect amenity in the long term, which may involve other future residents.
9. The Council has given reasons for the judgement it reached. A decision to refuse must have not been wholly unsurprising to the Appellant who decided nevertheless to progress. It was not an illogical decision based on what had gone before and all other circumstances. As it happens, I agree with the conclusion reached by the Council on the scheme. However, even if I had not, I would nevertheless defend its analysis and development plan and emerging policy referencing, and reach the view that its assertions in the round were not unsubstantiated and its actions throughout the process were not irrational.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR