



Costs Decision

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022.

Costs application in relation to Appeal Ref: APP/Q1445/W/22/3297037 141 Elm Grove, Brighton BN2 3ES

- 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 Patrick Eraut, Mishbec Ltd for an award of costs against the decision of Brighton & Hove City Council.
 - The appeal was made against the refusal of an application, Ref BH2021/04478, for a change of use from residential dwelling (C3) to House in Multiple Occupation (C4) and erection of rear dormer and rear extension (part retrospective) at 141 Elm Grove, Brighton BN2 3ES without complying with conditions attached to planning permission Ref BH2021/03176, dated 2 December 2021.
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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 Appellant notes that although recommended for approval by officers, the Planning Committee set forth on unsubstantiated and unsupported discussion with a focus of the debate which ran counter to the Council's own published standards for HMOs on minimum room sizes and so forth. The resultant reason for refusal as printed on the decision notice BH2021/04478 was vague and generalised.
 4. It is said that the Council failed to have regard to preceding appeal decisions where measurements were accepted less than this scheme. Having lost an appeal against the same Applicant where 3.3sqm per person and no outside space was deemed to be sufficient, the Council might reasonably be expected not to reject 4.5sqm per occupant, with landscaped rear garden, less than a year later. It is put that no material considerations were identified that would be persuasive enough to tilt the decision in favour of refusal. There was lack of substance in some of the Councillors' arguments against the sixth bedroom and none of the Officers or Councillors visited the property. No attempt was made by Officers to correct these or to provide Members with additional information and the Appellant's request to speak at Planning Committee was denied, so the opportunity to explain that the communal space and bathrooms met the Council's HMO Standards was lost.
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5. The case is put that the reasons for refusal were not substantiated by Members and this behaviour has delayed development that was in accordance with the development plan.
6. For its part the Council underlines that Councillors are at liberty to decide planning applications otherwise than in accordance with their officers' views. Members are not obliged to accept statutory consultee responses or indeed Inspectors' decisions. The Councillors assess the material planning considerations for themselves and they decide the weight that they would attribute to those considerations. The Council argues that this is the process of democracy.
7. The Council states that the Members' decision was made against the background of a detailed Officer's report and it is put that a full presentation of the scheme was given followed by a good quality of debate and pertinent questions. The Council argues that the reason for the refusal of planning permission is clear and justified and further explanation of this decision is provided in the Committee minutes which detail the debate which took place.
8. 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.
9. I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost. However, I would say that the Council has given reasons for the subjective judgement it reached. It is a fact that no two cases are identical. One appeal decision cannot simply be 'transferred' to a different site. I surmise that the Members considered a comprehensive report and dealt with the plans before them, along with all other material considerations including substantive representations, and reached a not wholly illogical decision on the scheme. The suitability of the use of the 'basement' front room as a bedroom was not entirely clear cut in amenity terms and the appropriateness of communal space will always have a degree of subjectivity.
10. Whilst the supportive text of Policy DM7 from the emerging City Plan Part 2 was set out in the report the square metreage therein is not an absolute standard and furthermore at the time of the Council's decision that Plan had not reached the stage in the development plan process which it has now. I recognise from around the country Planning Committee systems which only allow an Applicant to speak when objectors are taking part in the same way, and I do not find that surprising; nor the fact that Members did not visit the site. I am satisfied that this scheme was judged on its own merits and I am not persuaded that there was inconsistency in approach. Obviously, the Members did not follow the advice of the Officers. Nevertheless, to my mind the refusal reason is clear and sets out unequivocally the concerns of the Council and cross-refers to applicable policies.
11. As it happens, I do not agree with the conclusion reached by the Council on the scheme. However, I would nevertheless defend its wording and assertions in the round as not being unsubstantiated and its actions throughout the process as not being irrational.

12.I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR