
Costs Decision

Site visit made on 10 October 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Costs application in relation to Appeal Ref: APP/Q1445/W/21/3289476 1 Wanderdown Road, Ovingdean, Brighton BN2 7BT

- 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 KSD Group Ltd for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for development described as 'demolition of existing bungalow and replacement with 2.5 storey building containing 5 residential units and associated works'.
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Decision

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

Reasons

2. 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. In essence, the costs application relates to the substance of pre-application officer advice, the basis of the officer recommendation and the substance of the Council's reason for refusal (RfR). The Council was given the opportunity to comment on the costs application. I have taken comments received into account in my decision.
4. PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
5. In response to an initial scheme, the applicant received informal written, non-binding pre-application advice (PAA) from a Council planning officer, as per the disclaimer contained therein¹. The PAA was informed by some 'specialist' officers, but not all statutory consultees, nor by public consultation. Under the heading 'Design and Impact on the SDNP' the PAA sets out that 'as stated within the Urban Design Advisor comments, the LPA has concerns about the built form, scale, massing... of the proposal'. The PAA goes on to elaborate, in some detail, specific reasons for these concerns.
6. Comments given by specialist officers or statutory consultees during the Council's consideration of the application is advice. It remains for the planning officer (in this case, the same officer that gave the PAA) to reconcile that

¹ Council letter dated 5 January 2021

advice into a recommendation, balancing all of the relevant considerations, and exercise planning judgement. That such advice may not be determinative to a planning officer's assessment is not unusual or unsurprising and certainly not unreasonable. On the evidence before me, the applicant decided to amend the submitted proposal directly in response to consultee comments, not at the request of the planning officer.

7. I do not, therefore, agree with the applicant that 'at no point in the process did the Council advise that the scale, bulk and massing of the development... would be harmful to the character of the area and site surrounds'. The planning officer clearly did not support the scheme for these reasons at pre-application stage and ultimately maintained this position. The applicant concedes that the pre-application scheme was 'manifestly similar' to the submitted proposal.
8. There is no reasonable expectation that planning permission will be granted by the Council or by an Inspector. Nor is, notwithstanding the statutory period, the timing of such a decision certain. The reasons why the Council's decision took as long as it did are not clear, though the applicant agreed that the application was to be referred to a planning committee meeting in December 2021, whereas the decision was issued sooner in November. I do not, therefore, have any evidence that there was undue delay or that the time taken was in itself unreasonable for any other reason. Having reached the recommendation that the planning officer did, there is no apparent reason for the Council to have delayed making its decision.
9. The Council's appeal statement responded to the applicant's appeal statement and gave an update on certain matters. While the Council largely relied on the officer report it was entitled to do so. The report is detailed and (with the statement) substantiates the RfR which relates to matters of acknowledged planning interest and refers to relevant development plan policy. I consider that the report was adequate to properly exercise the Council's development management responsibilities and alleged 'incorrect assertions' did not form part of the RfR. It will be evident from my appeal decision that I find the Council's RfR was not vague, generalised or based on inaccurate assertions about the impact of the proposal. The RfR went to the heart of the proposal and as such these matters could not be rectified using conditions. The Council did not, therefore, prevent or delay development which should clearly have been permitted.
10. The applicant could have pursued a fresh planning application in light of the Council's decision and with the benefit of the officer report and the RfR. Instead, the applicant decided to pursue the matter through the appeal process. PPG sets out that parties in planning appeals normally meet their own expenses.

Conclusion

11. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in PPG, has not been demonstrated. A full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR