
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: 14 November 2022

Costs application in relation to Appeal Ref: APP/Q1445/W/22/3292466 Palmer and Harvey House, 106-112 Davigdor Road, Hove BN3 1RE

- 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 Stonegate Homes (Hove) Ltd for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for the erection of a new office block.
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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 is that it was unreasonable for the Council to take the time that it did to determine the application, that its decision was influenced at a late stage by the Council's design officer comments and that it was denied the opportunity to amend the proposal so that planning permission could have been granted.
4. The Council was given the opportunity to comment on the costs application. I have taken comments received into account in my decision.
5. PPG states that costs applications may relate to events before the appeal was brought, including behaviour and actions at the time of the planning application. However, costs unrelated to the appeal are ineligible and cannot be claimed for the period during the determination of the planning application. Nor do such costs extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.
6. The applicant received pre-application advice about the 'direction of travel' for development of the site. Such advice is informal and non-binding and often given without the benefit of full consultation or a planning officer site visit. There is no reasonable expectation that planning permission will be granted by the Council, nor is the timing of the Council's decision certain. That said, the reasons why the Council's decision in this case took as long as it did are not entirely clear or persuasive. On the evidence before me, and fully appreciating workload commitments, it was nevertheless unreasonable for planning officers to seek the design officer's comments at a late stage. Such comments were

likely to be relevant given the nature of the proposed development, its location and the (then) emerging relevant development plan policies. It ought to have been apparent at the outset that such advice could have been material to planning officers' assessment of the application, as indeed it eventually was.

7. However, even if the design officer's comments had been received earlier in the application process, there is no evidence to suggest that this would have resulted in a different decision made by the Council. It was not willing to entertain significant amendments to the submitted application, nor was it obliged to do so.
8. Planning officers were entitled to seek the design officer's comments. This advice informed the planning officer who was duly authorised to make a delegated decision, albeit that it departed from the planning case officer's oral recommendation previously given in good faith to the applicant. It was not so much a case of inconsistent advice, as the applicant suggests, but incomplete advice when it was given. I appreciate that this would have been frustrating for the applicant, but professional and procedural scrutiny of planning case officer recommendations by senior officers is not in itself unusual or unexpected and certainly not unreasonable.
9. There is therefore no apparent reason why, by that time, the Council would have further delayed its decision. It will also be evident from my appeal decision that the Council did not 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, with the benefit of the planning officer report, the reasons for refusal and the design officer's comments. Instead, the applicant disagreed with the Council and, as it is entitled to do, decided to pursue the matter through the appeal process, including the time incurred and other collateral consequences in so doing. 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