



Costs Decision

Site visit made on 31 January 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06.03.2024

Costs application in relation to Appeal Ref: APP/Q1445/W/23/3325524 21 Queens Road, Brighton BN1 3XA

- 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 Brighton & Hove City Council for an award of costs against Mr Stewart.
 - The appeal was against the refusal of planning permission for the change of use from a residential flat (C3) to a short-term holiday let (sui generis).
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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. Such unreasonable behaviour may be procedural, relating to the appeal process, or they may be substantive relating to the issues arising from the merits of the case presented.
3. The applicant's costs submission comprises three aspects; (i) the planning statement submitted with the planning application, whilst setting out some impacts that form material considerations, fails to refer or analyse any planning policy, (ii) following receipt of planning policy comments that were central to the reason for refusal, the appellant did not provide any further justification to make the case concerning an exemption under Policy DM2(f) of the Brighton & Hove City Plan Part Two (2022) (CPP2) during the planning application that was then central to their appeal case; and (iii) the appellant asserted that the description of development they sought in the application is not actually development and presented contradictory arguments during the appeal regarding what has been applied for.
4. With regard to the first point, whilst it is good practice to do so, there is not a legal requirement to specifically refer to and analyse planning policy within a planning statement. The Council also validated the planning application based on the information submitted, which included the planning statement. The Council therefore had the opportunity to require more information in respect of planning policy at the point the planning application was submitted if they considered the planning statement to be deficient. Moreover, the Council was able to make a decision on the planning application against relevant planning policy considerations based on the information before them. I therefore do not

find that the lack of policy reference and analysis within the planning statement amounts to unreasonable behaviour by the appellant.

5. Turning to the second point, I have reviewed the correspondence between the Council and the appellant's agent that took place during the planning application. It is evident that the Council's concerns with the proposal in respect of compliance with Policy DM2 of the CPP2 were expressed in writing to the appellant including allowing them to provide relevant justification in response. There was then a response from the appellant's agent who sought to provide further justification seeking to comply with Policy DM2.
6. Whilst, Policy DM2 (f) was not specifically referenced, a response was provided by the appellant. This correspondence demonstrates that the appellant set out their views why they thought the proposal was acceptable in planning terms, including referring to their belief that the property could be used as a short-term holiday let without the need for express planning permission. Whilst the appellant did not expressly make the case for the proposal to be considered in accordance with Policy DM2(f), it is clear from the correspondence that they considered the existing use was a material consideration that should be taken into account. That the Council did not agree with the appellant's views and their attempts at justification provided at the application stage does not amount to unreasonable behaviour; it was clearly a difference of professional opinion, which is a regular occurrence within the planning system.
7. Finally, the submitted grounds of appeal were seeking to address the Council's reason for refusal and referred conflict with Policy DM2. The grounds of appeal are somewhat confusing in that they do state that the property would remain in Class C3, which is a position that contradicts with the description of development as applied for. However, at no point does the appellant seek to change the description of development and has maintained throughout that it is seeking a permanent change of use to a 'sui generis' use.
8. My analysis of the grounds of appeal is that they are more seeking to advance the case that there would not be a material difference in operational terms between the existing C3 use and the proposed sui generis use to demonstrate that residential accommodation would not be lost in this case. This is ostensibly the same argument that was presented by the appellant during the planning application in the correspondence referred above. The Council could have addressed this point in their officer's report at the application stage as the correspondence confirms it had been suggested by the appellant as potentially being a material consideration. This point, whilst more explicitly made during the appeal, was therefore not a new one for the Council to have to address in their response. Whilst, the grounds of appeal could have been clearer on this point, I do not think that the appellant's case at appeal was so contradictory that it amounts to unreasonable behaviour.
9. In conclusion, the appellant endeavoured to demonstrate why they considered the proposal acceptable. The main thrust in their grounds of appeal was that they contend there is not a material difference in operation between the existing use and the proposed short-term let use. However, at no point do they state that planning permission is not needed, nor did they seek to change the description of the proposed development. That they sought to rely on compliance with Policy DM20 (f) in their appeal submissions was in my view a legitimate approach to be taken.

10. In this case, I found that the appeal proposal was unacceptable in planning terms contrary with the development plan when read as a whole and taking into account material considerations. However, I am satisfied that the appellant's case was an appropriate one to have made in an appeal context.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

N Perrins

INSPECTOR