The Planning Inspectorate

Costs Decision

Site visit made on 1 November 2016

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 December 2016

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3152366
Hove Business Centre, Fonthill Road, Hove, East Sussex BN3 6HA

- 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 Nigel McMillan, Pearl & Coutts for a full award of costs against Brighton & Hove City Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the creation of 4 no. 1 bed flats, 4 no. 2 bed flats and 1 no. 3 bed flat on the roof of the existing building, removal of redundant industrial pitched roof lights and creation of new ground floor link between the front and rear of the building.

Decision

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

Reasons

2. Planning Practice 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. In this case, the appellant argues that the Council acted unreasonably in failing to determine the application in an acceptable timescale which meant that an appeal against non-determination was necessary. Secondly, the Council failed to give proper weight to the Written Ministerial Statement (WMS) dated 28 November 2014 and Planning Practice Guidance (PPG), instead giving undue weight to Policy CP20 of the Brighton and Hove City Plan Part One (the CPP1). The resulting decision to resist the development without a financial contribution towards affordable housing was unreasonable and this also led directly to the unnecessary expense of an appeal.

4. The determination of the application was initially delayed due to concerns regarding the robustness of the noise assessment submitted with the original application in November 2014. A second assessment was only submitted in October 2015 and the appellant agreed an extension of time to 31 December. The application was duly reported to committee within this timescale, on 9 December, when it was resolved to grant permission subject to a S106 agreement. The responsibility for drawing up the agreement is not clear, but the Council issued engrossments on 25 February 2016 after which the appellant took until 28 April to return the agreement to the Council.

5. The delays up to this point were therefore primarily the responsibility of the appellant, and by this time Policy CP20 of the CPP1 had been adopted. This raised the new issue of an affordable housing contribution, rapidly followed on 11 May by the Court of Appeal decision to reinstate the WMS as a material consideration. Given the then conflict between Policy CP20 and the WMS/PPG, it was not unreasonable for the Council to take until 6 June to consider their position before seeking a financial contribution towards affordable housing.

6. The delays in the determination of the application were not therefore primarily attributable to the Council and were not unreasonable in the circumstances.

7. Turning to the Council's decision to pursue an affordable housing contribution contrary to Government guidance in the WMS/PPG, this was based on the then recently adopted development plan Policy CP20. Whilst the WMS/PPG is a material consideration and post-dates Policy CP20, the latter still remains part of the development plan. Even if very considerable weight is given to the WMS/PPG, this does not automatically outweigh relevant policies in the development plan. The planning balance will depend on the evidence in each case and the local circumstances regarding affordable housing which by definition vary from place to place. The appellant's view that the WMS/PPG must prevail over the development plan is erroneous, indeed the Council drew my attention to one appeal decision in Elmbridge where the local need for affordable housing was treated as overriding[1].

8. Given the clear need for affordable housing in Brighton & Hove and the recently adopted Policy CP20 which supports a contribution, it was not unreasonable for the Council to pursue its argument to appeal. No previous appeal decisions within the Council's area relating to this matter were drawn to my attention.

9. The appellant raises the issue of housing land supply in the application for costs, but this is not relevant as nine flats would be provided whether or not a financial contribution is made towards affordable housing. The appellant also claims that he was improperly required to enter a S106 agreement, but this was not one of the grounds of appeal and is not substantiated.

10. Whilst the timing of the events in this case was undoubtedly unfortunate for both parties I do not find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated.

David Reed

INSPECTOR

[1] Other decisions considered the WMS/PPG should prevail, but the point remains valid.