



Costs Decisions

Hearing held on 9 July 2009
Site visit made on 9 July 2009

by **Mrs H M Higenbottam**
BA (Hons) MRTPI

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

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Decision date:
5 August 2009

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2093160 (Appeal A)

24 Albert Road, Brighton, BN1 3RN

- 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 Z Solomon for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a 2 storey side extension - resubmission of application BH2001/02392/FP approved on appeal.

Summary of Decision: The application fails and no award of costs is made.

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2093161 (Appeal B)

24 Albert Road, Brighton, BN1 3RN

- 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 Z Solomon for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a 2 storey extension to form a separate dwelling.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Mr Z Solomon

1. The application is for a full award of costs and refers to paragraphs 7, 8, 11 and 16 of Annex 3 of Circular 8/93.
 2. In determining the appeal which was allowed in 2003 (APP/Q1445/A/02/1095629) the Inspector concluded that the extension would remain subservient to the large principal building, it would not unbalance it and would not harm the street scene. The Inspector in this case concurred with the previous Inspector in the 1990 appeal (T/APP/N1405/A/89/134335/P7) and concluded that the extension would probably enhance the conservation area in accordance with relevant planning policies.
 3. The Council's evidence relates to changes in planning policy and that it disagreed with the previous Inspectors conclusions. Whilst the Brighton and Hove Local Plan (LP) has been adopted since the 2003 decision, the general thrust of both National and Local Planning Policies have not changed.
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4. Appeal A is virtually identical to that previously approved twice on appeal and the Council has shown blatant disregard to both previous appeals and has clearly prevented development which could have been permitted. Appeal B has the same form, apart from a small projection at the rear, so should have been permitted.
5. The Council failed to respond to a letter from the appellant's solicitors and refused meetings to discuss the impasse. A meeting with the Council's enforcement officer was set up but then cancelled.
6. The Council failed to consider the possibility of imposing conditions to overcome reasons for refusal 2 to 5 in relation to Appeal B.
7. Due to the wholly unreasonable stance taken by the Council the appellant has been put to considerable expense in having to pursue these appeals and therefore a full award of costs is justified.

The Response by the Council

8. The Appeal A proposals are materially different to that which was allowed on appeal in 2003. The main differences between the Appeal A proposal and the previously permitted scheme are an increase in ridge height, reduced set back and alterations to the window and garage door positions.
9. The Council consider that there has been a material change in policy since the 2003 appeal decision. The previous local planning policies did not make any reference to the importance of gaps. The LP and Conservation Area Character Appraisal were both adopted after the 2003 appeal decision. LP Policies HE6 (d) and QD14 (c) refer to space around/between buildings and retaining an appropriate gap.
10. The Council consider what has been built on site is different to the 2003 appeal scheme. There has been no valid commencement of the approved scheme. The appellant does not appear to have sought to implement the 2003 approved schemes and the development on site indicates a different use, levels, windows and details.
11. In the light of evidence submitted with the appeal and at the Hearing, the Council accept that some reasons for refusal concerning Appeal B could be overcome by the imposition of conditions.
12. The Council have not acted unreasonably in determining the planning applications.

Conclusions

13. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
 14. Whilst I accept that the national and local planning policies have not fundamentally changed since the 2003 appeal decision, the appeal proposals are, in my view, materially different to that previously permitted.
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15. In relation to Appeal A and reason for refusal 1 of Appeal B the dispute essentially involves a matter of judgement. While the appellants may not agree with the weight that the Council gave to this matter, it is one of judgement and there is no call to say that the Council was unreasonable in this regard, merely that it gave the issue a different weight to the appellants, as, indeed, do I.
16. In the light of evidence presented by the appellant during the course of the appeal and at the Hearing the Council accepted that reasons for refusal 2 and 3 of Appeal B could be addressed by the imposition of conditions. In relation to reason for refusal 4 of Appeal B I concluded that the proposal could be amended to meet lifetime homes standards. However, in relation to the efficient use of energy, water and materials (reason for refusal 5) the appellant did not produce evidence in relation to this matter. In my view, it was not unreasonable of the Council, on the evidence available at the time of determining the application the subject of Appeal B, to have refused the scheme for the reasons stated.
17. I conclude unreasonable behaviour resulting in unnecessary expense as described in Circular 8/93, has not been demonstrated. Awards of costs are not justified.

Formal Decisions

18. I refuse the applications for an award of costs.

Hilda Higenbottam

Inspector

