



Costs Decision

Site visit made on 12 May 2010

by **Victor Crumley** DipTP DMS MRTPI

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

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Decision date:
27 May 2010

Costs application in relation to Appeal Ref: APP/Q1445/A/10/2119610 40 Tongdean Avenue, Hove BN3 6TN

- 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 Mrs L Achurch for a full award of costs against Brighton and Hove City Council.
- The appeal was against the refusal of planning permission for construction of a new house.

Summary of Decision: The application for an award of costs is refused.

The Submissions for the Appellant

1. The appellant's case was submitted in writing.

The Response by the Council

2. The Council's response was also made in writing.

Conclusions

3. Circular 03/2009 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.
 4. The appellant argues that the reasons given for refusal were based on misrepresented and misleading information of plans and drawings as communicated to members orally and in writing. I assume that this refers to the officers' report to Committee, and the presentation of the case at the Committee meeting. The Committee report is detailed and lengthy, and in my view explains adequately the officers' views of the case. It is clear from the Committee minutes that drawings were exhibited at the meeting and discussed, and that matters of concern to the appellant were raised at the meeting. I cannot know exactly what was said at the meeting, but I see no evidence to demonstrate that these stages were conducted unreasonably.
 5. Complaint is made that the description of Tongdean Avenue given in Reason 1, which describes it as '...characterised by large plots with generous spaces between buildings' is misleading. I acknowledge that extensions to the sides of buildings and some recent redevelopment have resulted in buildings close to plot boundaries, but I consider that the effect of this depends on the height and bulk of buildings close to boundaries. I consider that it is possible to hold different views as to whether the relationship between the properties can be characterised in this way. I find the description to be a reasonable reflection of
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most of the properties in the street, and in my view the use of the phrase in this context would not mislead the Council members who made the decision, and could not be considered as unreasonable.

6. Complaint is also made about the use of the phrase 'three storey appearance' to describe the appeal proposal in Reason 2. The dwelling proposed would have living accommodation on ground, first and second floors. The second floor would be contained within the roof space, but its presence would be emphasised by the feature window created from a prominent glazed gable. The ridge level would be similar to No. 40, but the height of the new house would be greater. In these circumstances I find the use of the phrase 'three storey appearance' to be acceptable. The minutes make clear that at their Committee meeting members asked questions about the height and were shown the drawings. I do not therefore consider that the description was likely to convey a mistaken impression, and I do not find it to be unreasonable.
7. It is alleged that members' attention was not drawn to the approval granted for a large extension at No. 36, and that this was misleading. However, I find that the Committee report contains a paragraph which clearly states that an extension to No. 36 has been approved, and comments on the likely impact of this extension, should it be built, on the effect of the appeal proposal. The minutes state that the Area Planning Manager gave a presentation detailing the '.... history of the site and the extant (but yet to be executed) permissions granted in relation to neighbouring plots....'. It seems to me that members would be well aware of the permission to extend No. 36, and would be able to take it into account in reaching a decision. I do not find the Council's action on this matter to be unreasonable.
8. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 3/2009, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

9. I refuse the application for an award of costs.

Victor Crumley

INSPECTOR