



Costs Decision

Site visit made on 20 April 2011

by Sheila Holden BSc MSc CEng TPP MICE MRTPI FCIHT

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

Decision date: 4 August 2011

Costs application in relation to Appeal Ref: APP/Q1445/A/11/2144362 Land at 14a Upper Hollingdean Road, Brighton BN1 7GA

- 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 a full award of costs against Mr Leo Horsefield.
 - The appeal was made against the refusal of planning permission for an amendment to original application BH2006/03532 for the new build dwelling registered as 14a Upper Hollingdean Road. The original approved existing drawings/section were incorrect. This application provides revised corrected drawings of the as-built new dwelling.
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Decision

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

Reasons

2. 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.
 3. The development that has taken place on the site following the grant of planning permission for a 2 bedroom dwelling in 2007 (Ref: BH2006/03532) has been the subject of on-going discussions and negotiations between the parties since 2008. There is substantiated evidence that the building that has been constructed does not accord with the approved plans or comply with a number of the conditions attached to that permission.
 4. From the description given on the application form it would appear that the appellant was seeking to use the submission of a fresh application as a means of providing corrected, as-built drawings. However, it is clear to me that the application did not fulfil this requirement since the plans were not an accurate representation of the existing building. Furthermore, there was also only limited evidence submitted with the appeal to substantiate compliance with outstanding matters relating to conditions on the original approval. In addition I concluded that the plans submitted with the appeal were not capable of being implemented in any event. These discrepancies were more fully discussed in the substantive decision on the appeal.
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5. A number of the issues that the Council was attempting to address related to a failure to comply with conditions on the original permission. Some of these, such as the quality of the building and the requirement to satisfy various codes and standards could have been addressed through submission of revised plans, additional reports or a fresh planning application with appropriate supporting documentation. However, they could also have been resolved more appropriately through other action by the Council. Nevertheless, the Council accepted the application and attempted to assess it, even though they were aware that the plans did not correspond with the description on the application forms.
6. From the correspondence and meetings that took place, as well as the way in which the Council responded to the application, it should have been abundantly clear to the appellant that it was the non-compliance with the conditions that was of greatest concern both to the Council and the residents of the surrounding houses. This should have persuaded the appellant to discuss matters further rather than go to appeal. I acknowledge that the Council has sought to regularise the situation through a fresh planning application, rather than through pursuing enforcement action. However, this course of action did not produce an outcome that was satisfactory for either party and I have had to consider the appeal on the basis that it was for a materially different development to that which had been constructed on the site. The reasons for this were more fully explained in the substantive decision.
7. It therefore seems to me that both parties have wasted time and expense in the pursuit of this appeal that could have been avoided, particularly if the application and plans had been thoroughly examined before being registered. The right of appeal should, as stated in the Circular, be exercised with caution. However, as the basic design of the building is similar to that which had already been approved by the Council it was not, therefore, a case of an appeal that had no chance of success in principle. In this case it was because of important and critical details that the appeal failed.
8. In my view the appellant has not pursued the appeal in a manner where his behaviour could be considered unreasonable; the proposal is not one which falls within any of the criteria set out in Paragraph B13 of the Circular. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and that a full award of costs is not justified.

Sheila Holden

INSPECTOR