



Costs Decision

Site visit made on 21 August 2012

by M T O'Rourke BA(Hons) DipTP MRTPI

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

Decision date: 26 September 2012

Costs application in relation to Appeal Ref: APP/Q1445/A/12/2172338 6 Cliff Approach, Brighton BN2 5RB

- 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 Ms Phoebe Oliver for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of the Council to grant planning permission for demolition of existing property and erection of apartment building containing six flats (amended scale and design to BH2010/01893).
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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 expense or wasted expense in the appeal process.
3. Two grounds are made for an award of costs. The first relates to process and the Council's handling of the application in the lead up to and including its consideration at committee and the second relates to the substantive nature of the case put by the Council at the appeal stage.
4. Prior to its meeting, the committee carried out a site visit to which the appellant was not invited nor made aware that it was going to take place. The site is on the corner of two roads. There would have been no need for anyone to have entered private land and thus no need to notify the applicant. In that pre-committee visits allow members to be fully aware of the surrounding area and the site's characteristics and constraints when making their decisions, I do not think the Council can be criticised for what is good practice. Anyway having read the officers' reports, members can always go themselves and visit sites on which applications have been made and in which they have an interest.
5. The IT system failed at the committee meeting. That was unfortunate but outside the control of the officer. In any event the Council contends that there was a full presentation to members that would have allowed them to fully understand the development. The minutes confirm that this was by way of references to photographs of the site, the neighbouring street scene and elevational drawings of the previously approved and application schemes.

6. I also note from the minutes that Mr Bareham spoke on behalf of the applicant at the meeting and he would have had the opportunity then to have added to the officer's explanation of the scheme if he had thought anything relevant had been omitted or which needed further clarification/explanation. For these reasons and given that members had also earlier visited the site, I do not find that the Council behaved unreasonably in its handling of the application.
7. Members determined to refuse the application contrary to the officer's recommendation. Paragraph B20 of the Circular is clear that planning authorities are not bound to accept the recommendations of their officers. But what they are required to do if professional advice is not followed, is to show reasonable planning grounds for taking a contrary decision and '*produce sufficient evidence on appeal to support the decision in all respects*'.
8. The appellant has referred to the committee being influenced in its decision by the objections of local residents. Advice at paragraph B21 is that '*to carry significant weight, opposition should be founded on valid planning reasons which are supported by substantial evidence*'. In that respect at the appeal stage the Roedean Residents Association provided an 18 page objection statement with appendices prepared by a planning consultant.
9. In support of its case at appeal, the Council provided a 10 line statement which referred to the minutes as detailing '*the events which took place and led to the refusal of the application*'. The minutes, whilst recording the debate, do not provide the level of objective analysis of the scheme and its impact that paragraph B20 and B21 require to be provided in circumstances where there is substantial local opposition and members determine to overturn the recommendation of their officers. Whilst I have agreed with the Council that the appeal should be dismissed, I came to that decision on the basis of my own consideration of the details and merits of the scheme, having regard to the cases made on behalf of the appellant and local residents and bearing in mind the officer's assessment of the scheme.
10. The key test is whether evidence is produced on appeal which provides a respectable basis for the authority's stance (paragraph B16). I do not consider that the minutes were sufficient in that regard. By not producing further relevant evidence to support the reasons for refusal at the appeal stage, the Council's behaviour was unreasonable as described in paragraphs B16, B18, B20, B21 and B22 of the Circular.
11. However that is not the end of the matter. For costs to be awarded unreasonable behaviour must also have resulted in unnecessary or wasted expense. It is not the case here that the appeal could have been avoided (paragraph A25). I have found that the Council had reasonable concerns about the impacts of the proposed development which justified its decision. The appellant had to address those concerns and the evidence of the third parties. For these reasons, I do not find that the appellant was caused unnecessary or wasted expense despite the Council's unreasonable behaviour in not producing further evidence at the appeal stage.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.

Mary O'Rourke Inspector