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## Costs Decision

Site visit made on 19 November 2012

**by Bridget M Campbell BA(Hons) MRTPI**

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

**Decision date: 27 November 2012**

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### **Costs application in relation to Appeal Ref: APP/Q1445/X/12/2169949 115 Carden Hill, Brighton BN1 8DA**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Mr G Gutierrez for a full award of costs against Brighton & Hove City Council.
  - The appeal was against the refusal of a certificate of lawful use or development for a parking area to an existing dwelling.
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### **Decision**

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

### **Reasons**

2. The application for costs and the response for the Council were made in writing. In essence, the Appellant claims that it was unreasonable of the Council not to submit a statement to substantiate its case and to submit the appeal questionnaire late. The Appellant has thus been put to unnecessary expense in having to pursue the appeal. The Council responds by saying the decision notice sets out clearly two reasons for refusal and that those were considered in depth in the Officer's delegated report.
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. Taking the Council's decision notice first, this refers in reason for refusal 1 to "Class F above" but gives no explanation as to what Class F is or where it is to be found. The second reason for refusal is somewhat better in that it refers to Class F of the Town and Country Planning (General Permitted Development) Order 1995 as amended. However, even that is imprecise. The Class F to which the Council is referring is to be found in Part 1 of Schedule 2 to the Order. There are other Class Fs in other parts of Schedule 2 and the Appellant should not have had to work out which one the Council was referring to. Nonetheless, it is clear that the professionally represented Appellant did know what the reference to Class F meant.<sup>1</sup>
5. Turning then to the Council's questionnaire, this should have been submitted in a timely manner but of greater significance is the fact that the Officer's delegated report, to which the Council has referred, was not attached. No

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<sup>1</sup> See Appellant's Statement January 2012 – paragraph 6.1

further statement was submitted by the Council. It was therefore necessary to rely entirely on the reasons for refusal given on the decision notice to understand the Council's case. Notwithstanding the imprecision identified, the reasons given do indicate why the Council considered a LDC could not be issued.

6. In my view, the Council's behaviour in issuing a decision notice with reasons for refusal worded with insufficient precision and its omission in not sending the Officer's report with the appeal questionnaire might be considered to be unreasonable. A Council should exercise its duties and responsibilities with due care. However, even if that was unreasonable behaviour, an award of costs is not justified unless that behaviour can be shown to have resulted in wasted expense for the Appellant. In this case, the Appellant was able to understand from the Council's decision notice why a LDC had been refused. With that before him he chose to pursue his case to appeal and that appeal failed. Thus any wasted expense arose from his decision to pursue the appeal and not from any action of the Council.
7. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.

*Bridget M Campbell*

Inspector