



Costs Decision

Site visit made on 8 January 2013

by Ann Skippers BSc (Hons) MRTPI FHEA FRSA AoU

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

Decision date: 21 January 2013

Costs application in relation to Appeal Ref: APP/Q1445/D/12/2187977 4 Tongdean Road, Hove, East Sussex BN3 6QB

- 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. Christopher Liu for a full award of costs against Brighton & Hove City Council.
 - The appeal was made against the refusal of planning permission for the 'demolition of existing garage and erection of new single storey double length garage. Extension to existing consulting room at ground and first floor level with pitched roof to provide car port and habitable space above. New garden wall and gates to front'.
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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 Circular acknowledges that many appeals involve matters of judgement concerning the character and appearance of a local area. This is one such example. Paragraph B18 advises that where the outcome of an appeal turns on an assessment of such issues it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the development.
 4. From the information before me it appears as if the internal consultation response from the Heritage Team officer was amended by the Council. In my view the difference between the first version which stated "...and there are therefore no objections subject to..." and an apparent second version which substitutes that phrase with "...however there is still concern that the new addition will have more street impact than the main house" is important. Given this, and the advice from the planning officer to the applicant that the application was likely to be approved during the course of the application's determination, it is understandable that the applicant was surprised by the decision to refuse the application.
 5. However, authorities are not bound to accept the professional or technical advice of officers. If they do not, paragraph B20 makes it clear they must show reasonable planning grounds for taking a contrary decision and produce
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relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority.

6. If any authority deliberately conceals relevant evidence or indeed fabricates evidence this would, in my view, be likely to constitute unreasonable behaviour. In this case, I cannot tell whether the officers concerned changed their advice of their own accord and I cannot be sure whether there was deliberate concealment or fabrication of evidence. In any event, I am satisfied that both the officer's report and decision notice dealt with the impact of the development in sufficient detail setting out why the development could not be permitted by reference to development plan policies and other material considerations.
7. Therefore whilst it was regrettable that the decision came as an unwelcome surprise for the applicant, particularly given the previous discussions between the parties, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated. A full, or partial, award of costs is not justified.

Ann Skippers

INSPECTOR