The Planning Inspectorate

Costs Decision

Hearing held on 29 November 2012

Site visit made on the same day

by Isobel McCretton BA(Hons) MRTPI

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

Decision date: 8 February 2013

Costs application in relation to Appeal Ref: APP/Q1445/A/12/2181318
27-31 Church Street, Brighton BN1 1RN

- 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 Brockhampton Land Co Ltd for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a mixed use development comprising 9 no. dwellings, retail use (341m^2) and offices, with basement level parking for 25 cars and associated landscaping.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Brockhampton Land Co Ltd

2. An outline costs application was submitted in writing. The main basis for the application is the continual delay on the part of the Council in the determination of the application; that they sought to impose conditions which are unenforceable, lacking in precision and unreasonable; and that they failed to put forward any evidence or other justification to support the imposition of such conditions.

3. At the Hearing it was further argued that a duplicate application had since been approved in principle with the same conditions. The Council had still not produced any examples of the type of car park management scheme it expected to see which was unhelpful. Only at the last minute in the Hearing had the Council produced an appeal decision for an adjacent site with a condition which it considered could be acceptable.

4. The car park conditions were the sole stumbling block and were at the centre of the unreasonableness of the Councils approach. It had dragged its feet, only produced a decision on a duplicate application and conceded that the right condition had been imposed on an adjoining site. If this had been put forward when the appellant originally asked for the matter to be dealt with by way of conditions and not a S106 agreement, the matter could have been agreed quickly. The result had been much expense and a decision much later than it ought to have been.

5. Council had responded so slowly and when a decision emerged it was as an Officer report on the duplicate application and not as a result of dialogue and

communication. This left the appellants no room for manoeuvre. Even then the duplicate application was approved without amendment of the proposed conditions and, in the period between that approval and the Hearing, no discussion or justification had been provided apart from a letter to the Planning Inspectorate. No policy support, model condition or circular backed up the Council's stance, but there had been a concession at the Hearing that what had been done on the adjoining site could be applied here. This was a classic example of the Council failing to do what it ought to be doing i.e. approving sustainable development that can be built out.

The response by Brighton & Hove City Council

6. The Council had been working to get an acceptable scheme. The outstanding matter for the local planning authority had been car parking. As a S106 agreement had been suggested for sustainable transport conditions it was not unreasonable to also seek restrictions on the car parking spaces. This was the decision of the local planning authority and the committee.

7. A draft S106 was sent to the agent to hopefully undergo discussion on wording, but there was no response.

8. The fact that a duplicate application has been determined does not show that the previous decision was unreasonable. It is of comfort to the local planning authority to know that the car parking space will be available to the occupiers/users of the development given the Council's concerns about other sites where spaces are leased out. A car park management scheme provides reassurance and a basis for enforcement if necessary.

9. The appeal decision for the adjoining site which had been produced was intended to give a historical insight. It had not previously been considered in relation to this appeal and it was then realised that car park management was included in the conditions.

Reasons

10. Circular 03/09 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.

11. The Council approved the application in principle subject to the completion of a S106 Agreement. Although the Council claims to have had no reply when a draft S106 was sent to the agent, from correspondence with the planning department it is evident that within the following few weeks the appellants objected to the terms of the S106 set out in the Officers report and indicated that, if the restrictions to the car park were to be applied this should addressed by means of conditions instead. The Council appeared willing to consider this, but failed to continue dialogue with the appellants.

12. The appellants were clearly concerned about the operation and enforceability of a scheme. The Council failed to explain how this could be done or to produce examples of the other car park management plans which had been submitted. While I appreciate that such schemes may differ in detail according to the circumstances of each site, I do not consider that this means that examples were not available which could provide a basis for the development of a

management plan for the site if, as the Council claimed, it was a requirement that had been made previously.

13. A similar requirement was then placed on the duplicate application without further dialogue with the appellants despite their concerns about not having been given information as to the type of detail for the management plan the Council wished to see or its enforceability.

14. While it is reasonable for the Council to wish to restrict the use of the parking spaces to ensure that they are available to serve the development, there is no policy basis for insisting on the detailed management proposal the Council was seeking. Moreover it was not until the day of the Hearing that the Council produced an appeal decision for the adjoining site which contained a less detailed requirement for car park management. As this was the only matter of dispute between the parties, it seems to me that if constructive dialogue on the matter had taken place either before the appeal was lodged, or before a decision was made on the duplicate application, it would not have been necessary to progress with the appeal.

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Brighton & Hove City Council shall pay to Brockhampton Land Co Ltd, the costs of the appeal proceedings described in the heading of this decision.

17. The applicant is now invited to submit to Brighton & Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Isobel McCretton

INSPECTOR