



Costs Decision

Site visit made on 26 February 2013

by David Hogger BA MSc MRTPI MCIHT

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

Decision date: 5 March 2013

Costs application in relation to Appeal Ref: APP/Q1445/A/12/2180864 150 Ladies Mile Road, Brighton BN1 8TE

- 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 R Holness for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for a detached dwelling.
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Decision

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

Reasons

2. Circular 03/2009: Costs Awards in Appeals and Other Planning Proceedings advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur wasted or unnecessary expense in the appeal process.
3. There are in essence two strands to the appellants claim for costs. Firstly it is claimed that Committee Members acted unreasonably in ignoring the advice and recommendation of officers and secondly that the Council has not adequately defended their case for refusal.
4. Paragraph B20 of the Circular confirms that Local Planning Authorities are not bound to accept the advice of their officers. However, reasonable planning grounds for taking a contrary decision must be shown and relevant evidence must be produced to support the decision in all respects. This latter advice is emphasised in paragraph B16 which makes it clear that evidence should be produced at appeal stage to substantiate each reason for refusal. Paragraph A22 of the Circular confirms that failure to substantiate a reason for refusal is an example of unreasonable behaviour and in this respect the Council has failed.
5. The Council has not prepared a Statement in respect of the appeal and therefore the only indication of the reasoning used to justify the decision to refuse the planning application is to be found in the reason itself, which refers to 'an unacceptable loss of sunlight and daylight' to both 150 and 152 Ladies Mile Road. The Officer's Report considers the effect of the proposed dwelling on the occupiers of both 150 and 152 but concludes that 'no significant harm to neighbouring amenity would result'.

6. I accept that Members of the Committee did visit the site but I have been given no record of any conclusions that were drawn from that visit, or why the visit consequently led to the refusal of the proposal. No relevant evidence has been produced to support the Council's decision in all respects or justify taking a contrary view to officers.
7. The Council argues that it is unlikely that an Officer would defend a decision that is contrary to their views. However, it is common practice for Officers to speak on behalf of the Council, prepare statements and produce evidence, even if they hold a different viewpoint to the elected Members. Even if this approach could not be agreed there are other means of ensuring that all the necessary evidence is submitted (for example through the use of Planning Consultants or a Councillor who has the necessary expertise).
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 and Hove City Council shall pay to Mr R Holness, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Brighton and 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.

David Hogger

Inspector