
Costs Decision

Site visit made on 12 November 2013

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 7 January 2014

Costs application in relation to Appeal Ref: APP/Q1445/A/13/2200269 4 Elrington Road, Hove, East Sussex BN3 6LG

- 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 David Dayan for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of an application for planning permission for the renewal of planning permission BH2007/03959 for the erection of 1 new detached 3 bedroom house at 4 Elrington Road, Hove, BN3 6LG.
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Decision

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

Reasons

2. Circular 03/2009, *Costs Awards in Appeals and Other Planning Proceedings* (the Circular) 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 in the appeal process.
3. Paragraph B29 of the Circular sets out a number of circumstances which may lead to an award of costs against a planning authority. The two instances referred to by the appellant relate to situations where planning authorities do not determine cases in a like manner or where there is a failure to grant further planning permission for an extant or recently expired consent when circumstances have not materially changed.
4. In this case, the Brighton and Hove Local Plan was adopted in 2005. Within its reason for refusal, the Council referred to Policies QD1 and QD2 of the Local Plan. These policies have been 'saved' following a direction by the Secretary of State and, consequently, the relevant local planning policies had not altered in the period between the approval of the 2007 application and the Council's determination of the appeal scheme.
5. Equally, I note that no significant developments have taken place in the immediate vicinity of the site and, on the evidence before me, the context for the proposed development has not materially altered since the 2007 application was approved. Therefore, in line with advice in the Circular, circumstances would indicate that a like application to the 2007 scheme would be approved.

6. The overall height and footprint of the two schemes are similar and the gap between the side of the dwelling and the side of No 2 would be the same. However, the composition and form of the front of the dwelling proposed in the appeal scheme is noticeably different. The 2007 scheme contained a single storey projection to the front incorporating the entrances to the house and the integral garage. This single storey element was situated adjacent to the boundary with No 2. The main bulk of the dwelling was set behind this.
7. In contrast, the appeal scheme proposes two-storey projecting bays situated either side of a central entrance door. This alteration would have a material impact on the scale and appearance of the proposal in comparison to the 2007 scheme, noticeably increasing the bulk of the building adjacent to the boundary with No 2. In this respect, the two schemes are materially different.
8. Therefore, I do not consider that the circumstances referred to in paragraph B29 of the Circular, are directly applicable in this case. The schemes are materially different and consequently, there should be no assumption that they would be determined in a like manner. Although my conclusions on the merits of the proposal were different to those of the Council the decision involved a balanced judgement on matters of design and, in my view, it was not unreasonable for the Council to reach a different view.
9. With reference to judgements regarding character and appearance, paragraph B18 of the Circular sets out that a cost award will be unlikely if realistic and specific evidence is provided about the impact of development. In this case, although no supporting statement was submitted by the Council in relation to the appeal, I am satisfied that the officer report provided a reasoned justification for their decision with reference to the scale and form of the dwelling and its relationship with No 2 Elrington Road.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Circular, has not been demonstrated and, as such, an award of costs is not justified.

Chris Preston

INSPECTOR