



Costs Decision

Hearing held on 27 November 2008

Site visit made on 27 November 2008

by **Joanna C Reid** BA(Hons) BArch(Hons)
RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
15 December 2008

Costs application in relation to Appeal Ref: APP/Q1445/A/08/2074593 106 Longhill Road, Ovingdean, Brighton BN2 7BD

- 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 and Mrs A McGilligan for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for "demolition of existing house and construction of replacement dwelling with associated detached garage".

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Mr and Mrs A McGilligan

1. Paragraphs 7 to 9 of Annex 3 to Circular 8/93 *Awards of Costs Incurred in Planning and Other (including Compulsory Purchase Order) Proceedings* set out reasons where costs can be awarded if it is accepted that there has been an unreasonable refusal of planning permission. Paragraph 7 states that "a planning authority should not prevent, inhibit or delay development which could reasonably be permitted in the light of the development plan, so far as it is material to the application, and of any other material consideration." The Circular makes it clear that a Local Authority will be at risk of an award of costs against them if they refuse an application which accords with material policies in the development plan. It is the appellants' case that this development does comply with the material policies.
2. The Local Authority is expected to produce evidence to substantiate any appeal proceedings. The Inspector will have noted that on a number of occasions the Planning Officer in this case has used the word 'could' rather than 'would'. This straight away makes some of the comments very subjective. Also where the word 'could' has been used it relates to possible overlooking and it has been confirmed that this can be addressed by suitable planning conditions.
3. The Planning Officer has, in the appellants' opinion, completely misdirected himself in describing the adjoining dwellings as 2 storeys when they clearly have a substantial 3-storey element. Furthermore, the Planning Officer seems to be completely unaware of other recent applications in the area, and specifically at 128 Longhill Road, where 4 new dwellings have been approved recently (there had already been an earlier approval for 4 modern units on this site at the time the appeal proposal was being considered). The Planning Officer contends that the style of dwelling proposed would erode the character and rhythm of the street. If that is the case with this proposal, it certainly would have been the case with the 'Swiss Chalet' style of development at 128

Longhill Road and the design of the earlier approval. In the appellants' opinion, if that development is acceptable in the street scene there cannot be any objection to this development. The Planning Officer confirms that the approval for modernising the current dwelling is of a contemporary design and that as the proposed new dwelling is similar in design and in accordance with Policy QD1 there can be no objection to this approach.

4. The matters relating to refuse and waste disposal can be, and are normally, covered by a suitable planning condition, as included in the approval of 128 Longhill Road.
5. In terms of parking it is considered that the amount shown with the submitted plans is appropriate and, notwithstanding the views contained in the Council's *Supplementary Planning Guidance SPGBH Note 4 Parking Standards*, one space per dwelling is only applicable for units up to 3 bedrooms. There is no car parking standard for a dwelling of the size of the appeal proposal in the supplementary planning guidance. This proposal has, in total, 7 bedrooms, and therefore the parking is suitable for a dwelling of this size.
6. Taking the approval at 128 Longhill Road as a good and most recent example, it appears that the matters of concern raised by the Planning Officer can be controlled through appropriate planning conditions. The proposed dwellings at 128 Longhill Road have clear glazing in the flank elevations. The Council has imposed a condition for obscure glazing in their grant of planning permission. This shows that the matter could be controlled by condition.
7. The Council have argued that the appeal proposal fails policies in the Development Plan, but the scheme meets all of the policies listed on the back of the permission for 128 Longhill Road, and this includes all of the policies discussed at the hearing.
8. It is the appellants' firm opinion that this development should have been approved and the minor matters of concern raised by the Planning Officer could have been controlled through appropriate planning conditions. Therefore, for the reasons set out above it is considered that the Planning Officer has acted unreasonably in dealing with this application causing the appellants the unnecessary expense of this appeal, and therefore costs should be awarded in this case.

The Response by Brighton & Hove City Council

9. The reasons for refusal are precise, complete and relevant to the application. Each reason is substantiated by reference to the adopted development plan policies, supplementary planning guidance, and national guidance, as well as all material considerations.
10. With reference to 128 Longhill Road and the previous application for alterations and extensions to the house on this site, each scheme is dealt with on its merits. Although the scheme for 128 Longhill Road and the previous application for alterations and extensions to the house on this site were discussed at the hearing, their site circumstances and those developments are not comparable with the application scheme. The primary differences are the location and siting. These are material differences between the 2 applications.

11. Reference has been made to parking standards being applicable to only dwellings with up to 3 bedrooms. The Council imposes this standard on all dwellings regardless of size. When the previous standards were revised to take account of the guidance in Planning Policy Guidance Note 13: *Transport*, the title "up to 3 bedrooms" was left in in error. The standards are in any case maximum standards.
12. Reference has been made to matters in the reasons for refusal which could be controlled by conditions. Under the circumstances that the proposal was to be approved conditions would have been offered. As the proposal was to be refused these matters were included in the reasons for refusal.
13. The Council considers that their decision to refuse the proposal was reasonable and justified in this case.

Conclusions

14. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
15. Reason for Refusal 1 concerned the impact of the proposed house on the street scene and on the character and appearance of the surrounding area. The Council explained in their statement and at the hearing that, because of its siting and its scale, in their view, the house would be unduly prominent in the street scene in Longhill Road. Whilst I have found otherwise, the Council were entitled to exercise their judgement in what is essentially a subjective matter. The Council have substantiated their case by reference to the development plan and all other material considerations. Their reason for refusal was precise, specific and relevant to the application.
16. Reason for Refusal 2 concerned the impact of the proposal on the living conditions of the neighbouring occupiers with regard to overlooking and loss of privacy. In their statement, the Council expressed their concerns about the juxtaposition of the windows and balconies on the appeal dwelling and on the neighbouring dwellings, and they explained their concerns about actual and perceived overlooking and loss of privacy at the hearing. Even though I do not concur with their view, the Council exercised their judgement having regard to the development plan and all other material considerations. They have substantiated their case. They also recommended a condition for obscured glazing to overcome their objection. The Council's reason for refusal was specific and relevant to the application.
17. Reason for Refusal 3 concerned the provision of refuse and recycling facilities. In their statement the Council recommended a condition which would overcome their concerns, and they referred to Policies QD27 and SU2 in the Local Plan which were relevant. Had the proposal been considered to be acceptable, the Council would have offered to impose a condition, but as it was not, refuse and recycling was included in the reasons for refusal. The condition was acceptable to the appellants, and the minimal amount of discussion about it at the hearing was not unreasonable. The Council's reason for refusal was complete and specific.

18. Reason for Refusal 4 was concerned with the 'excessive number of car parking spaces'. At the hearing the Council clarified that their concern was only with the amount of car parking in the garage. The Council substantiated their case by reference to the development plan and other material considerations. Their concerns were in line with the thrust of national policy which seeks for development to be sustainable. Although I have found that a double garage would not cause harm, they had exercised their judgement based on their supplementary planning guidance and they had come to a different view, which they were entitled to do. Their reason for refusal was relevant to the application.
19. Having regard to all 4 reasons for refusal, I have found no evidence that the Council's behaviour has been unreasonable.
20. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

21. I refuse the application for an award of costs.

Joanna C Reid

INSPECTOR