



## Costs Decision

Site visit made on 21 November 2013

**by Timothy C King BA (Hons) MRTPI**

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

**Decision date: 13 January 2014**

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### **Costs application in relation to Appeal Ref: APP/Q1445/A/13/2203527 90 Hartington Road, Brighton, BN2 3PB**

- 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 Lewis and Co Planning for a full award of costs against Brighton & Hove City Council.
  - The appeal was against the refusal of planning permission for the conversion of a house to 4 self contained flats.
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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 basis of the costs application is that the Council's decision to refuse planning permission was contrary to the advice the applicant received from the Council at the pre-application stage, that the Council failed to adequately justify its decision to refuse planning permission, and that the Council failed to submit a statement of case.
4. In respect of the first point I refer to paragraph B8 of the Circular which mentions that allegations of mishandling planning applications or pre-application discussions may be indicators of unreasonable behaviour. The guidance goes on to state, however, that the purpose of the costs application process is not to resolve by investigation every allegation of unreasonable behaviour. Rather it is to decide whether or not an award of costs is justified on the available evidence in a particular case. In this instance, the submitted e-mail exchanges show that the case officer considered that the scheme's re-design had overcome the reason for refusal on a previous scheme. The case officer also indicates that a new application made in this respect would receive general officer support.
5. The final e-mail to the officer in the exchange is rather pointed in its attempt to receive the assurances sought. In turn, the advice given to the applicant in the e-mails should not have appeared so definite, with disclaimers best used to cover the officers in the event that planning permission might be refused, as happened here. Nonetheless, the opinion of an officer is not binding on the

Council as other factors have to be weighed into the process. When reaching its eventual decision the Council in simply not going along with the officer's informal views and, instead, refusing planning permission was not unreasonable behaviour. However, as I have indicated, the process could have been handled better.

6. The Council's reliance on the case report alone to substantiate its case does not in itself amount to unreasonable behaviour in an appeal proceeding by written representations. Indeed, such a report, together with relevant background documents, should reasonably be sufficient to present the Council's case. What is important, in a case involving matters of judgement, is whether or not the report is sufficient to substantiate the Council's case.
7. In my view the case report is sufficient in depth. It illustrates the Council's concerns and describes why the outlook from the basement flat would be poor, mentioning that the unit would be substantially enclosed. This is reflected in the decision notice, citing Local Plan Policy QD27 which is clearly relevant to the case.
8. I do not therefore consider that the Council's reliance on its case report alone gave rise to the appellant incurring wasted expense. It is obvious that the appellant understood the objections raised and, in fact, submitted a detailed rebuttal in this regard when lodging the initial grounds of appeal. The appellant subsequently backed this up with the submission of a more detailed counter-argument. As such, it can be reasonably concluded that the issues involved were clear from the start.
9. As detailed in my appeal decision I concur with the Council's decision to refuse planning permission which I find was adequately justified, and I do not believe that the Council has been shown to have behaved unreasonably.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.
11. For the reasons given above, I refuse the application for an award of costs.

*Timothy C King*

INSPECTOR