
Costs Decisions

Site visit made on 7 April 2014

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 17 April 2014

Costs application in relation to Appeal Ref: APP/Q1445/A/13/2204291 15 & 15a Victoria Terrace, Hove, East Sussex BN3 2WB

- 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 S Gregory & Mr S Taylor for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for alterations and extensions to 15 and 15a Victoria Terrace to re-locate existing café and change of use of portion of existing shop at 15 Victoria Terrace. Demolition of existing café and construction of new house on site.
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Costs application in relation to Appeal Ref: APP/Q1445/E/13/2204392 15 & 15a Victoria Terrace, Hove, East Sussex BN3 2WB

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 74, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Gregory & Mr S Taylor for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of conservation area consent for demolition of 15a Victoria Terrace.
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Decisions

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

Reasons

2. The application for an award of costs was made and responded to on the basis of Circular 03/2009 '*Costs Awards in Appeals and Other Planning Proceedings*'. This has been superseded by advice in the Government's web-based Planning Practice Guidance launched on 6 March 2014. However, on the facts of this costs application and the accompanying appeal, there is not considered to be any material change so as to disadvantage either party. The Guidance states that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. There were four reasons for refusal in the planning application and each is the subject of the appellants' claim for a full award of costs. The application for conservation area consent was refused due to the absence of an acceptable replacement scheme and hence the Costs Decision in that case follows as a result of the findings in the planning case.

Reason for Refusal 1, Character and Appearance

4. The Guidance lists behaviour that may give rise to a substantive award of costs against a Local Planning Authority, the list ending with the words 'The list is not exhaustive'. The reason for refusal refers to the design, form, detailing and composition of the front elevation and this can be read back into the comments in the Report about the inset balcony and the offset arrangement of the roof and windows below. The Heritage Team did not object, but they did raise a concern over the inset balcony, coming to a judgement that the narrowness of the street would not allow a view of this feature.
5. This is a matter of judgement, firstly as to whether a view might be had of the balcony, secondly, what the effect would be, and lastly, and not relying of any doubts as to visibility, over the effect of the window and roof relationship. The wording of the Report is clear that there are aspects of the scheme that are acceptable, in the use of materials and in principle. On the evidence of the site visit and consideration of the drawings, the Council came to a reasonable conclusion that the balcony could be seen and the conclusion that this would cause harm is consistent with the advice of the Heritage Team. Once those conclusions had been reasonably reached, the Council present sufficient evidence and an objective analysis of what the harm would be.

Reason for Refusal 2, Noise

6. Policy SU10 does not require a noise impact study as a matter of course and gives the impression that this would be requested in particular cases. Whilst the costs of such a study is not a material consideration, there is real doubt, as expressed in the accompanying Appeal Decision, as to whether a condition could be used satisfactorily to achieve the stated noise levels whilst still adhering to the layout shown on the drawing. The circumstances of a café extract, the proximity of a bedroom window and the degree of enclosure all indicate that the Council's concerns are reasonable and that it is for the appellants to provide proper reassurance that a technical solution can be made to work.

Reason for Refusal 3, Enclosure

7. This is again a matter of judgement, with no reference being made in the reason for refusal to outlook, or the matter of the 45° line, which is capable of objective analysis as a fact. The proposed building up of the development above the present single storey café would have a material effect on the sense of enclosure experienced by occupiers of the flat, and it is for the decision maker, the Council in the first instance, to judge the degree to which this effect is deemed to be harmful. The Council exercised this role reasonably.

Reason for Refusal 4, Amenity Space

8. Policy HO5 is clear that the provision of private useable amenity space will be required in new residential development where appropriate to the scale and character of the development. The scale here is a two double-bedroom property and the character is one of a single dwelling with no other open space around it, as might be the case with some development. The dwelling would rely on an area as shown on the drawings and described in the accompanying Appeal Decision. The beach and lawns do not provide private space, and that which is provided falls short in terms of its usability. The Council operated the

policy provisions reasonably and provide suitable evidence to back the assertion.

Conclusions

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

S J Papworth

INSPECTOR