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## Costs Decision

Site visit made 23 March 2015

by **Clive Tokley MRTPI**

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

Decision date: 29 April 2015

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### **Costs application in relation to Appeal Ref: APP/Q1445/W/14/3001082 Sandringham Lodge, 23 Palmeira Avenue, Hove, East Sussex, BN3 3GA.**

- 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 Anstone Properties Ltd for a full award of costs against Brighton and Hove City Council.
  - The appeal was made against the failure to determine an application within the prescribed period for a roof extension to provide two three-bedroom flats.
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### **Decision**

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

### **Reasons**

2. National guidance on costs can be found in *Planning Practice Guidance* (the Guidance) first published on 6 March 2014. The Guidance states that all parties in planning appeals normally meet their own expenses and are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process they may be subject to an award of costs.
  3. The appellant argues that the Council behaved unreasonably by failing to determine the planning application within the eight week period, failing to give an explanation for this and failing to seek an extension time. The appellant indicates that if the application had been determined within the prescribed period or within an agreed extended period the appeal would have been unnecessary.
  4. The Council draws attention to a number of factors that prevented the application from being determined within the eight week period including the need for additional publicity, the Council's procedures for referring applications to its Planning Committee and the effect of the Christmas period. Bearing in mind that the application was validated on 29 September I can see no justification for the Council's failure to carry out its full neighbour notifications until 5 November. Further, I note that more than five objections had already been received by the Council before the 5 November and therefore a referral to the Committee for decision would have already been triggered. Whilst I
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acknowledge that the Christmas period can be disruptive this was well beyond the eight week date and the Council was aware of the need for a Committee decision early in November.

5. The failure to carry out full neighbour notifications in a timely manner was entirely within the Council's control. I accept that the determination procedure would not have been clear at the outset; however this was known by the Council before it carried out the wider publicity. It is possible that referral to a Committee may have resulted in the eight week period being exceeded and this may be regarded as an acceptable cost of the democratic decision-making process. However I am not convinced that in this case it would necessarily have delayed a decision until after Christmas. Most importantly the Council had the opportunity to explain the position to the appellant and seek an extension of time with a clear end date but failed to do so.
6. I consider that the failure of the Council to determine the application within eight weeks does not amount to unreasonable behaviour; however in the light of the Guidance the Council acted unreasonably in failing to explain the position to the appellant and failing to seek an extension of time.
7. Following the making of the appeal the planning application was considered by the Committee on 28 January 2015. The Council resolved that it was minded to refuse the application for the reasons recommended by officers. I have seen no evidence to suggest that had the application been determined sooner, or had an extension of time been sought, the Council would have reached a different conclusion on the application.
8. Had the application been refused within the eight week period, or such longer period that may have been agreed, the only way forward for the appellant would have been to make an appeal. The appellant has given no indication that had the application been refused earlier an appeal would not have been made. Therefore the failure to determine the application on time would not have overcome the need for an appeal.

### **Conclusion**

9. Whilst the failures of the Council amounted to unreasonable behaviour I have seen no indication that better communication with the appellant would have enabled the appeal to be avoided. Therefore the Council's procedural shortcomings have not directly resulted in the expenditure arising from the appeal. I conclude that the Council's unreasonable behaviour has not resulted in unnecessary or wasted expense and therefore an award of costs is not justified.

*Clive Tokley*

INSPECTOR