



Costs Decision

Hearing held on 7 and 8 September 2010

by **Graham C Cundale** BA(Hons) MSc
MRTPI MIEEM

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:
18 October 2010

Costs application in relation to Appeal Ref: **APP/Q1445/A/10/2126978** **Gala Bingo Hall and adjacent car park, Portland Road, Hove, East Sussex** **BN3 5JB**

- 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 Downland Housing Association 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 development described as: '*Demolition of existing building. Redevelopment of site to provide new GP surgery at part ground, part first floor, new D1/D2 unit at ground floor and 35 residential units above in part 2, 3, 4 & 5 storey building including 14 affordable unit (40%) surface parking for 18 cars, cycle parking and landscaping*'.

Summary of Decision: I refuse the application for an award of costs.

The Submissions for Downland Housing Association

1. The Council behaved unreasonably in refusing planning permission.
2. First, it persisted in objecting to a scheme that had been revised to satisfactorily address the three specific reasons given by the Inspector in dismissing the previous appeal (ref: APP/Q1445/A/09/2097917). That appeal decision clearly indicated that a scheme amended to address those three points would be acceptable. This is an example of the circumstances which may lead to an award of costs, as described in paragraph B29 (fourth bullet point) of Circular 03/2009.
3. Secondly, the Council failed to show reasonable planning grounds for taking a decision contrary to the recommendation of its officers. It appeared to be motivated by political rather than planning considerations. Such behaviour was unreasonable and brings the whole planning system into disrepute. It is contrary to guidance in paragraph B20 of Circular 03/2009.
4. Thirdly, none of the Council's arguments supporting each of its three reasons for refusal have any substance. With regard to the first reason for refusal the reduction of the building at its northern end plainly deals with the previous Inspector's concern about the outlook from Nos 80 and 82 Marmion Road. And the provision of privacy screens and partial obscure glazing were considered by that Inspector to acceptably prevent overlooking. At the hearing the Council gave no substantive answer to questions about the differences now compared with at the previous appeal.

5. With regard to the second reason for refusal the previous Inspector was not concerned about density or site coverage. His concerns about open space and massing have both been addressed in the revised scheme. The Council's evidence on housing needs is completely contrary to the advice of its own housing department.
6. In relation to the third reason for refusal the previous Inspector did not identify any highway or transport objection, and there have been no material changes in either policy or physical circumstances concerning transport matters since the previous appeal. The highway authority did not object to the present appeal scheme and there is no evidence to support an unacceptable impact in relation to transport or travel demand. In any event the impact would be mitigated by the sustainable transport contribution in the Appellant's unilateral undertaking. Evidence from third parties was no different to that before the previous Inspector. Mr Preston's reports were submitted after the Council's decision and are not, and cannot be, relied on by the Council.
7. Because the Council's evidence does not provide a respectable basis for its decision there is also a conflict with the guidance in paragraph B16 of Circular 03/2009.
8. For all these reasons the Council has behaved unreasonably and the Appellant has been put to unnecessary expense in taking this matter to appeal.

The Response by Brighton & Hove City Council

9. Both the Councillors at the hearing had read the application and were mindful of the previous appeal decision. The Council supports the finding of the previous Inspector, but, since then, circumstances have changed. In particular the Council's Housing Strategy has changed. Also, since the time of the Appellant's traffic survey in 2008 a new children's centre has started on School Road and there has been an increase in school places and in traffic. Furthermore, the footprint of the proposed building has changed so as to make worse the important effect of perceived overlooking.
10. The submitted webcast and transcript show that the Council's decision was based on **planning** matters. Evidence from newspapers cannot be taken as fact.
11. Despite the Appellant's response to the previous appeal decision, as reflected in the scheme now at appeal, the proposals remain unacceptable.

Conclusions

12. 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.
13. In supporting reason for refusal No.1 the Council referred to the massing of the proposed building to the rear of Nos. 80 and 82 Marmion Road. It indicated that, although reduced in comparison with the previous appeal scheme, this massing would still be excessive in terms of its effect on the outlooks from the Marmion Road properties. Having regard to the wording of the previous appeal decision, I do not consider the Council's view to be unreasonable even though

it is not one that I share. Similarly with regard to the second reason for refusal the Council was able to substantiate its concern about housing mix by reference to its new Housing Strategy. Having regard to Local Plan policy HO3 this was not an unreasonable basis for the reason for refusal. In terms of character and appearance the Council drew attention to the more emphatic overhang on the School Road frontage in comparison with the previous appeal scheme and the absence of such a feature elsewhere in the locality.

14. In other respects the reasons for refusal were inadequately supported by the Council's evidence and there were insufficient grounds for departing from the recommendation and professional advice of its officers, especially in the light of the limited and specific grounds for dismissal given in the previous appeal decision. To this extent, and with reference to paragraphs B16, B20 and B29 of Circular 03/2009, I accept that the Council's behaviour was unreasonable.
15. However, because there were some reasonable grounds for the Council's decision I do not accept that the appeal and hearing should have been unnecessary.
16. Parts of the appeal proceedings were devoted to the consideration of the effects on parking, road safety and the privacy of neighbours, which were not substantiated in the Council's evidence. However, the same matters were the subject of objections and some substantial evidence presented by the local residents. Therefore these matters would have been dealt with at the hearing in any event, and I am not satisfied that the shortcomings in the Council's evidence caused any unnecessary expense to be incurred by the Appellant.
17. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

Formal Decision

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

G C Cundale

Inspector

