
Costs Decision

Site visit made on 15 May 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 21st June 2017

Costs application in relation to Appeal Ref: APP/Q1445/W/17/3168661 Brighton Dental Clinic, St. James Mansions, 16-18 Old Steine, Brighton BN1 1EN

- 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 Brighton Dental Clinic Ltd for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of planning permission for the installation of air-conditioning condenser unit and retrospective consent for exiting A/C unit on eastern (rear) elevation.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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 PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 4. The Appellant submits that the Council has acted unreasonably in that they failed to consider the public benefits of the proposal as indicated at paragraph 134 of the National Planning Policy Framework (the Framework) and that the Council did not seek to find a solution to their concerns. In respect of the second reason for refusal, the planning consideration went against the recommendation of the Environmental Health team, and a subsequent email from the planning officer indicating that noise would not be an issue with the only justification for the recommendation coming from reference to an earlier application (which the Environmental Health team also had no objection to).
 5. It is noted that the Environmental Health section did not require an acoustic report noting that it is a really busy area with a lot of noise both during the day and night, and that no noise complaints had been received in relation to the existing units.
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6. The Council have not provided any compelling evidence as to why a noise assessment was necessary to enable them to make a judgement on the noise impacts of the development, particularly given the advice from the Environmental Health team that such a report was not required.
7. Given the reason for refusal, the Appellant was effectively forced into providing such a report. Consequently, the refusal of planning permission on this ground constituted unreasonable behaviour contrary to the guidance in the Framework and the PPG and the appellant has been faced with the unnecessary expense of providing evidence to demonstrate that no planning issue would arise in this respect.
8. Turning to the assessment of the public benefits of the proposal, whilst the Officers report failed to make such an assessment I am mindful of Paragraph: 049 Reference ID: 16-049-20140306 of the PPG which indicates that a local planning authority would be at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal *on appeal* (my emphasis).
9. In this case the Council have, belatedly, made such an assessment concluding that the public benefits do not outweigh the harm. In my decision I agreed with that view. As such, I do not consider that any unreasonable behaviour has been exhibited by the Council in relation to refusal reason 1.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the noise reason for refusal of the application and therefore a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Brighton & Hove City Council shall pay Brighton Dental Clinic Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the noise reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Brighton & Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Chris Forrett

INSPECTOR