
Costs Decision

Site visit made on 1 November 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 16th November 2017

Costs application in relation to Appeal Ref: APP/Q1445/D/17/3182969 171 Elm Grove, Brighton BN2 3PZ.

- 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 Oliver Dorman for an award of costs against Brighton and Hove City Council.
 - The appeal was against a refusal to grant approval required under Article 3, Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

1. The application for an award of costs made by Mr Oliver Dorman against Brighton and Hove City Council is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process and that the application needs to clearly demonstrate that this is the case.
 3. The applicant is seeking an award of costs because the Council refused the application for prior approval on the basis of speculation about the future use of the premises. The Council indicated that without floorplans it was not possible to determine whether the proposal would result in an increase in occupancy which would potentially constitute a material change of use.
 4. Whilst the Council is not required to provide the applicant with an opportunity to submit further information during the application process, there is scope to do so. Nevertheless, as I have found, the applicant's original submission provided sufficient information on which to determine the application.
 5. The Council indicated that the onus is on the applicant to demonstrate that the proposed development is permitted under the GPDO and would not result in a material change of use. However, having determined an earlier similar application on the basis that the existing use as a sui generis House in Multiple Occupation would not be changed as a result of the proposed development it was unreasonable for the Council to raise that as a concern in relation to the appeal scheme.
 6. In addition, it was reasonable for the applicant to consider that no further information about the use would be required taking account of the delegated report relating to application BH2017/01371. The Council acknowledged that
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the previous application did not show the potential use of rooms and yet it did not consider the potential to intensify the use of the property at that time.

7. Moreover, had the Council needed further information in order to determine the application then under the provisions of Class A.4 (8) such further information could have been requested from the applicant. Having decided that more information was needed it was unreasonable for the Council to indicate that it was lacking through its decision notice when there was no evidence that the appellant would not have provided such information if requested. Furthermore, the applicant made information available during the appeal process which, as the Council confirmed, addressed its concerns about the use of the property.
8. It has been demonstrated that there was unreasonable behaviour resulting in unnecessary expense as described in PPG by the Council in respect of their failure to determine similar cases in a consistent manner and in refusing the application when it could have requested additional information to address its concerns. As a result a full award of costs is justified.

Costs Order

9. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Brighton and Hove City Council shall pay to Mr Oliver Dorman the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Brighton and Hove City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

Kevin Gleeson

INSPECTOR