



Costs Decision

Hearing held on 8 July 2009
Site visit made on 8 July 2009

**By B C Scott BA(Hons) Urban & Regional
Planning MRTPI**

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

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**Decision date:
16 July 2009**

Costs application in relation to:

Appeal [A] Ref: APP/Q1445/A/09/2098926

Appeal [B] Ref: APP/Q1445/A/09/2099302

68 Tongdean Lane, Brighton, East Sussex, BN1 5JE

- 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 C Blight for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with appeals against the refusals of planning permissions for: [A] rear extension over existing double garage; and [B] to erect rear extension, partially extending over existing double garage.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Applicant

1. The Applicant cites Circular 8/93 Annex 3 and in particular paragraphs 7, 8 and 15. Paragraphs B15, B16, B17 and B21 of Circular 03/2009 refer. The Applicant contends that the Council has been unduly influenced by local residents. The Applicant's case is that the Council has not substantiated each reason for refusal with reference to the Development Plan and all other material considerations and, therefore, seeks a full award of costs.
2. Concerning the first reasons for refusal (relating to character and appearance), the Applicant argues that the Council has failed to take account of the prevailing character of the area yet has concluded in each case that the proposed development would be harmful to the visual amenity of the surrounding area. In the Applicant's view the Council has refused the appeal applications just because the proposed developments would be large extensions. The Applicant points out that it is accepted that the extensions would be large, but that this does not automatically make them unacceptable.
3. Concerning the second reasons for refusal (relating to the living conditions of the adjoining occupiers), the Applicant draws attention to the separation distance involved and the position of the neighbour's garage. The Applicant asserts that it is inconceivable that each proposed development would result in an undue sense of enclosure, given such features. Furthermore, the Applicant points to an inconsistency in the Council's second reasons in that for the first appeal application (Scheme [A]) objection is raised to a proposed side-facing window, whereas in the second appeal application (Scheme [B]) no such objection is raised to the same proposed window. Moreover, it would be unreasonable to require that such a window should be fixed shut, as indicated in the Council's suggested conditions, due to its design and purpose.

The Response by the Council

4. The Council asserts that it has acted reasonably and determined the appeal applications with regard to the policies of the Development Plan and to all other material considerations. The Council contends that the reasons for refusal are justified and that the disagreement between the Parties about the merits of the proposed developments does not demonstrate otherwise. In that regard, the Council points to the reasoning set out in its Officer reports and Hearing statement.
5. Following the first refusal, the Council engaged in pre-application discussions. From the Council's standpoint, this amounted to constructive co-operation and dialogue between the Parties in accordance with the suggestions for good practice in the Circular. At those discussions, the Council made clear its reasons for what it considered to be an appropriate development and has maintained good records about that.
6. Concerning its second reasons for refusal relating to the proposed side-facing window, the Council draws attention to the additional detail given on the submitted drawing to scheme [B] (particularly the roof line of the neighbour's garage; drawing no.05/0809442) with which the impact of the proposed window could be more fully assessed than with the previous scheme.

Reasons

7. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

The first reasons for refusal

8. The reasoning given in the Council's officer reports and Hearing statement focuses on the sizes of the proposed developments in relation to ground levels. From that, the Council arrives at the conclusion that an excessively large addition and an over extended appearance would result from each scheme. The record of pre-application discussions (appeal document 4) does not show otherwise.
9. The policies of the Development Plan require that the qualities of the local neighbourhood and the context of the surrounding area are features that are to be taken into consideration. With my appeal decisions, I have found that split-level developments of considerable scale and imposing appearance are not out of place in the surroundings. The Council makes no such assessment, without which there is unlikely to be a respectable basis for the Council's stance that the schemes would be detrimental to the visual amenity of the surrounding area.
10. In my opinion, had the Council gone on to assess the 'large addition' of scheme [A] in its wider context, it might well not have concluded that it was excessive or that it would result in an over extended appearance. However, owing to my finding about the discordant nature of scheme [B], it is understandable that a conclusion be reached that an excessively large addition

and an over extended appearance would result. The Council's refusal reason uses the words 'an incongruous and unsympathetic feature' and, to my mind, it is axiomatic to state that this would be detrimental to the visual amenity of the surroundings.

The second reasons for refusal

11. From the appeal submissions, I come to the view that the Council's conclusion about excessive size has driven its assessment of each scheme's impact upon the outlook of the adjoining occupiers. The Council makes scant assessment of the living arrangements of the neighbours in terms of the use of buildings and spaces in juxtaposition (including relative heights) with the proposed developments. In the circumstances, I consider the Council's objections not to have been substantiated in each case.
12. With reference to scheme [A], at the Hearing the Council was unable to substantiate its concerns about privacy because of the intervening position and height of the neighbours' garage and the proposed floor levels, which were examined. Thus, the Council accepted that its suggested condition to restrict the use of the proposed window would be unnecessary.

Appeals [A] and [B]

13. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated. In the case of appeal [A] a full award of costs is warranted. In the case of appeal [B] a partial award is warranted, to the extent of the Applicant's unnecessary expenditure arising from the Council's second reason for refusal.

Formal Decision and Costs Order

14. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Brighton & Hove City Council shall pay to Mr C Blight the costs of the appeal proceedings, limited to those costs incurred in dealing with the Council's refusal reasons nos.1 and 2 for appeal [A] and reason no.2 only for appeal [B], such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned two appeals under section 78 of the Town and Country Planning Act 1990 against the refusals of applications for planning permission, for appeal [A] *rear extension over existing double garage* and for appeal [B] *to erect rear extension, partially extending over existing double garage*, on land at 68 Tongdean Lane, Brighton, East Sussex, BN1 5JE.
15. 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. 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 Supreme Court Costs Office is enclosed.

B C Scott
INSPECTOR
