



Costs Decision

Hearing held on 15 September 2009

by **J O Head** BSc(Econ) DipTP MRTPI

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:
12 October 2009

Costs application in relation to Appeal Ref: APP/Q1445/A/09/2105404 6 Cliff Approach, Brighton, East Sussex BN2 5RB

- 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 James Oliver, Safe Go Ltd for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of an apartment building for 7 self-contained flats, with communal garden space, cycle parking, refuse and recycling and car parking facilities.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Mr James Oliver, Safe Go Ltd

1. On behalf of Mr Oliver, Mr Bareham submitted a written application for an award of costs. Reference is made to paragraphs A12, A18, B10 & B12 of Circular 03/2009. The application is on the basis that the Council acted unreasonably by not determining the planning application, with no reasons given for the delay. The delay was extensive (almost 8 months) and might have led to the applicant losing the right to appeal. A full award of costs is requested, in accordance with paragraph A18.

The Response by Brighton & Hove City Council

2. For the Council, Mr Hill said that there were staffing and manpower issues. The Council had a staff shortage and temporary officers left at short notice. That is the only mitigation that can be offered at this stage.

Applicant's reply

3. Mr Bareham said that those issues are an internal matter, not a planning one.

Conclusions

4. 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.
5. Paragraph B10 of the Circular refers to failure to determine an application within the time limits because of the complexity of the case and because of

- substantive or unforeseen concerns arising from it. Those circumstances do not appear to apply here. Paragraph B12 relates only to enforcement proceedings. However, paragraph B11 advises that, in any appeal against non-determination, the authority should explain the reason for not reaching a decision within the relevant time limit. The submission in the written application that the case officer "failed to visit the site until 24 March 2009 – over 5 months after the application was registered" was not disputed by the Council. Neither was the submission that the case officer then left the Council's employment without completing a promised report on the planning application.
6. The planning application was registered by the Council on 2 October 2008 and the applicant was given a target date of 27 November 2008 for a decision to be issued. No explanation was given to the applicant for the delay in undertaking a site visit or in reaching a decision on the planning application and none has since been given, other than the generalised reference to staffing difficulties in response to the application for an award of costs.
 7. Nevertheless, at the hearing, the Council was represented by a Senior Planning Officer, who gave evidence that, had a decision been reached, planning permission would have been refused for a number of reasons. It has not been suggested that the evidence given at the hearing was insubstantial or inadequate to support those reasons. If the planning application could have been determined favourably within the relevant period, an award of costs may well have been justified, as the delay to the proposed development would have been unreasonable and the appeal could have been avoided. However, it is clear that a favourable decision from the Council would not have been the outcome. I have also dismissed the appeal.
 8. Paragraph B8 of Circular 03/2009 says that allegations of mishandling of the planning application may be an indicator of unreasonable behaviour by the planning authority, but that the purpose of the costs application process is not to resolve by investigation every allegation of unreasonable behaviour. Rather it is to decide whether or not an award of costs in respect of the appeal is justified on the available evidence in a particular case. Although the Council's delay in determining the planning application without any proper explanation amounts clearly, in my opinion, to unreasonable behaviour, it has not resulted in an unnecessary appeal and has not, therefore, caused the applicant to incur or waste expense in that regard. The conditions for an award of costs set out in paragraph A12 of the Circular have not therefore been fully met.
 9. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

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

John Head

INSPECTOR
