



# Costs Decision

Site visit made on 4 March 2010

**by Megan Thomas BA Hons in Law,  
Barrister**

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

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**Decision date:  
9 April 2010**

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## **Costs application in relation to Appeal Ref: APP/Q1445/A/09/2111981 Land at The Priory, London Road, Brighton BN1 8QS**

- 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 Anstone Estates Ltd for a full award of costs against Brighton & Hove City Council.
- The appeal was made against the failure to determine an application within the prescribed period for a roof extension to blocks C and D to provide 4 x 3 bedroom flats, each with own roof garden, and a cycle store.

**Summary of Decision: The application is refused.**

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### **Reasons**

1. 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.
2. Paragraph B11 of the Circular confirms that where an appeal against non-determination is allowed, the planning authority may be at risk of an award of costs if it is concluded that there were no substantive reasons to justify delaying the determination and a greater level of communication with the applicant would have enabled the appeal to be avoided altogether. The applicant has based the costs application primarily on this paragraph and paragraph B10 and considers the Council to have "acted unreasonably causing the appeal to take place due to unjustifiably failing to determine the application within the determination period".
3. The email correspondence reveals protracted and in part, unexplained delay by the Council between the date of the application (9 January 2009) and the date that the appeal against non-determination was made (3 September 2009). However, whilst I have considerable sympathy for the applicant I am obliged to consider whether they have been made to incur wasted expense by having to appeal this case. The key question is whether they would have found themselves in a position of having to make an appeal in any event.
4. The Council indicate in their costs representations that under Council Protocol due to the number of objections received from local residents the planning application had to be reported to Members of the Planning Committee in order for a decision to be made. The determination could not apparently have been made by an officer under delegated authority. Consequently, even though the eventual Report to Committee on this application recommended that planning permission should be granted, Members resolved that they would have refused

the application on three grounds had they had the jurisdiction to do so. Those three reasons for refusal have formed the main issues in the accompanying appeal decision.

5. Paragraph B20 of the Circular makes it clear that planning authorities are not bound to accept the recommendations of their officers. In this case, there was always a risk, given the number of objections lodged, that at Committee stage Members would exercise their own planning judgment and disagree with the officer's recommendation. It seems to me that that was a risk which applied at any time during or after the relevant time limit for determination. Therefore, referring to paragraph B11, I cannot in this case conclude that there were no substantive reasons to justify delaying the determination and a greater level of communication with the applicant would have enabled the appeal to be avoided altogether. Whilst there has been prolonged delay by the Council in dealing with the application, I cannot conclude that speedier and better communication with the applicant would have resulted in avoidance of the appeal altogether.
6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

**Formal Decision**

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

*Megan Thomas*

INSPECTOR