



Costs Decision

Site inspection on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 6 December 2010

Costs application in relation to Appeal Reference:

APP/Q1445/A/10/2128998

Land at 1-2 Newbarn Cottages, Foredown Road, Portslade, Brighton BN41 2GB

- 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 A R Uridge for an award of costs against Brighton and Hove City Council.
- The appeal was against the decision by the City Council to grant planning permission subject to conditions for the conversion of two semi-detached cottages into a single family dwelling together with the extension and alterations to both cottages. The condition in dispute is No 3 of those attached to the permission, which states:

“Notwithstanding the details of the proposed rear elevation as indicated on drawing no 2121/09/01, the proposed first floor gallery window shall be reduced in size, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter.”

Decision

1. The application is refused.

Reasons

2. I have considered the application for costs in the light of Circular 3/09 and all the relevant circumstances. The circular advises that irrespective of the outcome of appeals, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expenditure unnecessarily.
3. The disputed condition relates to a window in the proposed extension. The claim for costs as expressed when the appeal was lodged was based on the statement: “The applicant considers that the imposition of the condition [Condition 3] is unreasonable and unwarranted given that the window would be wholly obscured from public view”. When invited by the Planning Inspectorate to expand on this brief statement, the appellant’s agent referred to the location and siting of the proposed development “within the confines of [the] established farm”.
4. The City Council have not submitted any written response to the costs application.

5. As is pointed out in my decision on the appeal, the contention that the window would be wholly obscured from public view is incorrect. The later statement about the confines of the farm seems to be another way of saying that the window would not be visible to the public, and my previous comment applies again.
6. The council evidently considered that the proposed window would be “oversized” and out of keeping with the more traditional form of fenestration on the existing building. This was a reasonable concern, and partly reflected comments made by two local organisations (representing the interests of the South Downs National Park) which were consulted about the application.
7. The council could have refused permission for the whole development instead of imposing Condition 3, bearing in mind that the window appeared to be an integral part of the overall design. However, a smaller window could conceivably provide adequate light for the entrance hall and landing, so the condition as imposed would not necessarily have nullified the permission. The fact that I have allowed the appeal, for the reasons explained in the appeal decision, does not mean that the council acted unreasonably.
8. I conclude that the council did not behave in such an unreasonable way as to justify an award of costs. Therefore the application does not succeed.

G F Self

Inspector