The Planning Inspectorate

Costs Decision

Site visit made on 26 October 2010

by Isobel McCretton BA(Hons) MRTPI

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

Decision date: 15 February 2011

Costs application in relation to Appeal Ref: APP/Q1445/A/10/2131115
Land rear of 67-81 Princes Road, Brighton BN3 2OJ

- 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 Carelet Ltd for a full award of costs against Brighton & Hove City Council.
- The appeal was against the refusal of planning permission for construction of 6no. three-storey, two bedroom terraced houses with pitched roofs and solar panels. Provision of private communal gardens, waste and refuse facilities and erection of a street level lift gatehouse with cycle store.

Decision

1. I allow the application for an award of costs in the terms set out below.

Reasons

2. Circular 03/2009 (C3/09) 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.

3. Para B20 of C3/09 states that planning authorities are not bound to accept the recommendations of their officers. However if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. In addition, para 16 of C3/09 states that reasons for refusal should be complete, precise, specific and relevant to the application. Planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations.

4. The Council's second reason for refusal was that 'the proposal, by reason of it having 6 dwellings on the site, would result in a cramped standard of accommodation for future residents, contrary to policies QD27 and HO4 of the Local Plan'. Exactly what was meant by a '*cramped standard of accommodation*' was not clear. The policies cited are of a fairly general nature. Policy QD27 indicates that planning permission will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Policy HO4 sets out that to make full and effective use of the land available (in accordance with policy QD3) , residential development will be permitted at higher densities than those typically found in

the locality where it can be adequately demonstrated that the proposal: a) exhibits high standards of design and architecture; b) includes a mix of dwelling types and sizes which reflect local needs; c) is well served by public transport, walking and cycling routes, local services and community facilities; and d) reflects the capacity of the local area to accommodate additional dwellings.

5. However in its statement the Council's concern is confined to the size and quality of the outdoor amenity space and the outlook from certain windows. There is also some conflict in the reasoning in that the poor outlook and a sense of enclosure would result from the high walls and embankment but in respect of the third reason for refusal, that at one end the embankment would be lower and thus mean that the occupiers would be more likely to be subjected to noise from the railway line and the nearby Materials Recovery Facility (MRF).

6. As the reason for refusal was not precise and the Council does not have specific space standards, the appellant carried out unnecessary work regarding internal space and density. I consider that this was because of unreasonable behaviour on the part of the Council in not giving a precise reason for refusal.

7. In terms of reason 3 the dwellings proposed in this appeal would not be closer to the MRF than the dwellings in the extant permission. The acoustic report submitted with the application shows that, on the basis of the readings taken, the site is within Noise Exposure Category[1] (NEC) A for daytime and NEC B for the night time period i.e. noise is not a determining factor during the daytime and at night should be taken into account and where appropriate, conditions imposed to ensure an adequate level of protection. The Council's Environmental Health Officer accepted that the noise experienced within the dwellings could be addressed by conditions. Attaching such conditions is common practice in such situations.

8. The MRF appears to be contentious, having given rise to a number of complaints about noise and odour from local residents in the area. However the facility is subject to conditions regarding noise and operating practices and no evidence has been submitted to show that these are not effective or not enforceable. The only evidence submitted by the Council are 2 subjective, unquantified observations about noise from a local resident and a Councillor. As Members refused the proposal against the recommendation of officers I do not consider it unreasonable for the Council to include evidence from one of the Members in its submissions. However the Council adduced no evidence to show that the noise climate in the area is materially different from when permission was given for the extant scheme. I consider this to be unreasonable.

9. The first reasons for refusal focussed on parking. No on-site parking is proposed, and the Highway Authority accepted the appellant's assessment that there was available capacity in on-street parking in the area to meet the demand which would be likely to arise from the new development. Again I do not consider it unreasonable for the Council to have included the evidence from a local Member. While I have treated the residents' Community Parking Survey with some caution, it was done after consultation with the Highways department and has highlighted some issues which were not fully addressed by

[1] As defined in Planning Policy Guidance 24: Planning and Noise.

the appellants. In terms of the appeal it is a matter which the appellants would have had to address in that it was also included in third party submissions. Thus in this regard I do not consider that the appellants were put to unnecessary expense.

10. C 3/09 states that while planning authorities are expected to consider the view of local residents when determining planning applications, the extent of local opposition is not, in itself, a reasonable ground for resisting development. The appellants are concerned that the decision was taken because undue pressure from local residents prior to an election. It is clear that there has been longstanding opposition to development on this site, but the Council granted planning permission for a development in 2009. I have set out above whether or not I consider there was evidence to substantiate the application for costs. There are other channels if the appellants are concerned about the propriety of the decision taken. However, the Council states that none of the election candidates who were interviewed by the Roundhill Society for its website were members of the planning committee which made the decision.

11. I conclude that unreasonable behaviour has not been demonstrated in terms of the issue of the evidence produced with regard to parking. However I consider that the imprecision of the reason for refusal in respect of cramped living accommodation and the lack of any technical evidence to support the reason for refusal on noise was unreasonable behaviour on the part of the Council which led to unnecessary expense for the appellants at appeal. As Such I consider that a partial award of costs is justified.

Costs Order

12. 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 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Brighton & Hove City Council shall pay to Carelet Ltd, the costs of the appeal proceedings limited to those costs incurred in addressing matters on density, accommodation standards and noise, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

13. 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 Senior Courts Costs Office is enclosed.

Isobel McCretton

INSPECTOR