



# Costs Decision

Site visit made on 11 May 2011

by **Elizabeth Lawrence BTP MRTPI**

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

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**Decision date:**  
**7 June 2011**

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## **Costs application in relation to Appeal Ref: APP/Q1445/A/11/2147411 Land adjacent to 1 Warmdene Way, Brighton, East Sussex, BN1 8NW.**

- 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 Bob Walters for a full award of costs against Brighton and Hove City Council.
- The appeal was made against the failure to determine an application within the prescribed period for demolition of existing garage and construction of a bungalow without complying with condition 11 attached to planning permission Ref BH2008/03475, dated 23 June 2009.

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### **Decision**

1. I allow the application in the terms set out below.

### **Reasons**

2. 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.
3. As stated in paragraph B20 of Circular 03/2009 planning authorities are not bound to accept the recommendations of their officers, however they do need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support their decision in all respects. In this instance the Council has failed to produce sufficient and relevant evidence to support their resolution to retain condition 11 against the advice of officers. The resolution was made prior to the submission of the planning appeal.
4. The only concern raised in relation to the removal of condition 11 in the evidence submitted by the Council was that it would result in more people applying for the return of Section 106 contributions. However the planning officer advised members that there had been a number of applications to remove such conditions and that the applicant had been advised to make the application, in accordance with the "*Temporary Relief Measures*" which came into effect on 17 May 2010. The Council subsequently failed to provide any evidence which addressed the continued need for the condition, having regard to infrastructure requirements arising from the development, policies TR1, SU14 and QD27 of the Brighton & Hove Local Plan and the "*Temporary Relief Measures*".

5. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has been demonstrated and that a full award of costs is justified.

**Costs Order**

6. 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 and Hove City Council shall pay to Mr Bob Walters the costs of the appeal proceedings, 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.
7. The applicant is now invited to submit to Brighton and 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.

*Elizabeth Lawrence*

INSPECTOR