The Planning Inspectorate

Costs Decision

Hearing held on 12 July 2011
Site visit made on 12 July 2011

by John Chase MCD Dip Arch RIBA MRTPI

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

Decision date: 19 August 2011

Costs application in relation to Appeal Ref: APP/Q1445/A/11/2147191
Land adjoining 481, Mile Oak Road, Portslade, East Sussex, BN41 2RE

- 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 Wilson Hunt for a partial award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for 2 semi-detached 3 bedroom houses with off-street parking.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions of the Parties

2. Wilson Hunt made the application in writing, claiming costs with respect to the third and fourth reasons for refusal of the planning application. The Council made their response in writing. Neither party wished to amend their statement at the close of the Hearing.

Reasons

3. 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 expense in the appeal process.

4. The third reason for refusal indicated that the residents of the new houses would not be able to achieve a reasonable level of amenity because of noise from the A27 by-pass. The appellants had submitted a noise report with the application, containing survey data, with recommendations of noise attenuation methods to produce an adequate living environment. The Council questioned the conclusions of this report, especially because it did not take account of variable wind conditions. Whilst the Council were entitled to form a different opinion, there was no indication of any technically derived data on which that opinion might have been based. Rather, the concern appeared to arise out of anecdotal information from neighbours.

5. As reported in the appeal decision, the appellants submitted a succession of ecology reports which progressively acknowledged the likelihood that protected species might be affected by the development, and which appeared to react to pressure from local residents. To this extent, there was some scope for scepticism on the part of the Council. On the other hand, the accuracy of any

individual report was clearly based on the conditions at the time of the survey and, in the end, the three reports, carried out over a period of 10 months, provided a reasonably comprehensive analysis of the ecological state of the site. The Council's evidence failed to provide any technical support for the assertion in the fourth reason for refusal that an appropriate site investigation had not been undertaken, and there was no clear evidence to rebut the appellants' contention that any harm could be adequately mitigated.

6. Paras. B16 and B20 of Circular 03/2009 require planning authorities to produce evidence to show clearly why development cannot be permitted, including in cases where the recommendation of officers has not been followed. Paras. B21 and B22 note the need for the views of local residents to be taken into account, but, to carry weight, those views must be supported by substantial evidence, and the possibility of overcoming the objection by the use of planning conditions should be considered (para. B25). Failure to follow these guidelines places the authority at the risk of costs.

7. For the reasons given above, there are adequate grounds to conclude that the Council failed to comply with the recommendations of the Circular, resulting in unreasonable behaviour with respect to the third and fourth reasons for refusal, and that the appellants suffered unnecessary expense as a result. An award of partial costs is justified.

Costs Order

8. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Brighton & Hove City Council shall pay to Wilson Hunt, the costs of the appeal proceedings limited to those costs incurred in responding to the third and fourth reasons for refusal on the Council's decision notice dated 27 January 2011, 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.

John Chase

INSPECTOR