



Costs Decision

Hearing held on 1 November 2011

Site visit made on 1 November 2011

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 8 November 2011

Costs application in relation to Appeal Ref: APP/Q1445/A/11/2155653 8 West Way, Hove, East Sussex BN3 8LD

- 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 Arif Essaji for a full award of costs against Brighton & Hove City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for "addition of first floor storey to form 2 x 2no bedroom units and 2 x 1no bedroom units, including ground floor extension and alterations to existing building".
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Decision

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

The submissions for Mr Arif Essaji

2. The costs application was submitted in writing. The following additional points were made orally.
3. The *Brighton & Hove urban characterisation study* is the only new document referred to by the Council which has been issued since the previous Inspector's decision. The *Brighton & Hove urban characterisation study* is an unadopted evidence base, which was produced for the emerging Local Development Framework, part of which has since been withdrawn. Having read the character study, it is the appellant's view that the proposed development would fit in with the character and appearance of the area.

The response by Brighton & Hove City Council

4. The response was made in writing.

Reasons

5. Circular 03/2009 *Costs Awards in Appeals and other Planning Proceedings* 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.
6. The appellant made a timely application for an award of costs.
7. The proposed development in the appeal before me was not materially different to the scheme considered by my colleague in his appeal decision ref APP/Q1445/A/09/2102145. It had been refused for 2 reasons concerning

- the living conditions of nearby occupiers, and character and appearance. My colleague found that, apart from his concerns about the living conditions of the occupiers of 2 neighbouring dwellings with regard to daylight and sunlight, and a proper means of securing the then required financial contribution for transport, the scheme was acceptable.
8. Reason for refusal 1 refers to the living conditions of nearby occupiers with regard to overlooking. My colleague had considered nearby occupiers' living conditions, including overlooking, and, apart from a lack of technical evidence concerning sunlight and daylight, had found no harm. The appellant submitted technical evidence with the planning application for the appeal proposal which shows that there would be no harm to the living conditions of neighbours with regard to daylight and sunlight.
 9. Paragraph B18 of the Circular explains that planning appeals often involve matters of judgment concerning the character and appearance of a local area or the living conditions of adjoining occupiers. Where the outcome of an appeal turns on an assessment of such issues it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed development. On the other hand vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in a costs award.
 10. The Council's officer recommended that the proposal should be approved subject to the imposition of conditions. Paragraph B20 of the Circular 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. If they fail to do so, costs may be awarded against the authority. Whilst Planning Committee Members had visited the site before determining the application, the Council produced little substantive evidence to support reason for refusal 1.
 11. The advice in paragraph B29 of the Circular is that persisting in objections to a scheme, or part of a scheme, which an Inspector has previously indicated to be acceptable, may lead to an award of costs. The Council persisted with reason for refusal 1, contrary to the decision of the previous Inspector, and their professional officer's advice, and it was supported by little evidence. This was unreasonable behaviour.
 12. Reason for refusal 2 refers to the unacceptable impact on on-street parking, and, thus, the effect that it would have on highway safety and the free flow of traffic in the nearby streets. The proposal was consistent with the objectives of national policy in Planning Policy Guidance Note 13: *Transport* and it satisfied the maximum car parking standards in the Local Plan. The highway authority did not object to the proposed development. Paragraph B24 of the Circular explains that what matters in any subsequent costs application is whether or not the authority can show good reason for accepting, or rejecting, the consultee's advice. However, insufficient reasons were put to me.
 13. The Council's officer had recommended the scheme for approval. There had been no significant change to relevant Development Plan and national policy since my colleague's decision. The recessionary measures put in place by the Council do not say that there is any requirement for otherwise acceptable

schemes to compensate for the measures, for example, by providing on-site parking where none would be required to satisfy Local Plan policy. The site plan for the scheme considered by my colleague differed from the site plan in the appeal before me, but in both cases no on-site car parking was proposed. Thus, this was not a sufficient reason to justify the Council's stance. The Council had not determined like cases in a like manner, contrary to the advice in paragraph B29 of the Circular. To introduce a new reason for refusal without a significant change in circumstances was unreasonable behaviour.

14. Furthermore, paragraph B21 of the Circular states that whilst planning authorities are expected to consider the views of local residents, the extent of local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons which are supported by substantial evidence. Reason for refusal 2 was unsupported by technical evidence to show that if the occupiers of the development were to park cars in the nearby streets that this would endanger highway safety or impede the free flow of traffic. Thus, the Council's behaviour was unreasonable.
15. Reason for refusal 3 concerns the character and appearance of the area, which the previous Inspector and the Council's officer had found to be acceptable. Whilst the *Brighton & Hove urban characterisation study* has been finalised since my colleague's decision, it supports the appellant's view that the proposed development would respect the character and appearance of the area. My decision to allow the appeal reflects this.
16. Whilst the Council objects to the use of timber panelling, my colleague had explained in his decision that this material would be appropriate. The Development Plan policies do not say that materials which are not typical of the local area should not be used, and the Council has found timber panelling to be acceptable in other parts of the City. The Council's stance was unsupported by substantial evidence. The Council had persisted in objections to a scheme which an Inspector has previously indicated to be acceptable, contrary to the advice in paragraph B29 of the Circular. This was unreasonable behaviour.
17. Reason for refusal 4 concerns the loss of community facilities during the construction phase of the proposed development. This was not a concern of the Council in the previous appeal. Paragraph B29 of the Circular advises that Councils will be at risk of an award of costs for not determining like cases in a like manner – for example, imposing a spurious additional reason for refusal on a similar scheme to one previously considered by the planning authority where the circumstances have not materially changed.
18. Little evidence was put to me to show that the community facilities at the site would be unable to continue at the site during the construction phase. Nor was it shown that the community facilities would be displaced during the construction phase, and that suitable temporary accommodation would not be available in the local area. The Council's legal officer had advised the Council that the arrangements for the construction phase were a matter between the landlord and his tenants, and not a material planning consideration. No change of use to the ground floor of the appeal building was proposed, so no community facilities would be lost. Instead, the scheme would enhance those facilities. Thus, there would be no conflict with Local Plan policy. This was also unreasonable behaviour by the Council.

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

Costs Order

20. 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 Mr Arif Essaji the costs of the appeal proceedings described in the heading of this decision.

21. 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.

Joanna Reid

INSPECTOR