



Costs Decision

Site visit made on 16 February 2012

by M T O'Rourke BA (Hons) DipTP MRTPI

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

Decision date: 21 February 2012

Costs application in relation to Appeal Ref: APP/Q1445/D/11/2167681 31 Florence Road, Brighton BN1 6DL

- 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 Peter Maddalena for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of the Council to grant planning permission for widening existing pillared entrance to boundary wall (Retrospective).
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Decision

1. The application for an award of costs is refused.

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. An award of costs does not necessarily follow the appeal process. Whilst I have found against the Council in my decision and allowed the appeal, I am satisfied that the Council produced evidence at the appeal stage to support its reason for refusal which had regard to the development plan and all other material considerations. The decision rested on matters of judgement concerning the character and appearance of Florence Road and of the Conservation Area. Circular paragraph B18 advises that 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 development.
4. Although the Council's Conservation and Design Team considered the alterations to the wall and pier to be acceptable, it was as an exception to guidance in the Council's adopted SPD. Having noted that consultation response, the planning officer was entitled to take a different view, so long as full justification was provided for that different view. I am satisfied that the officer's report dealt in sufficient detail with the impact of the appeal development in terms of the character and appearance of the houses and the contribution of the walls and piers to the streetscene. Also the Conservation and Design Team did not consider the question of precedent and it was appropriate for the officer to address that in his report and sufficient reasoning was given to justify the view that it represented a risk.

5. The appeal decision at 5 Florence Road was also considered in the report and the differences with the appeal development drawn out. The Council provided more than '*vague, generalised or inaccurate assertions*' about the proposal's impact (paragraph B18). It also relied upon its adopted supplementary planning guidance on architectural features, and in such cases paragraph B19 advises that an award of costs is unlikely to be made. Although I have come to a different view on the development, the Council did produce sufficient evidence to substantiate its reason for refusal.
6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

Mary O'Rourke

Inspector