



Costs Decision

Site visit made on 26 February 2013

by David Hogger BA MSc MRTPI MCIHT

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

Decision date: 19 March 2013

Costs application in relation to Appeal Ref: APP/Q1445/A/12/2186240 Land adjacent to 19 Roedean Road, Brighton BN2 5RA

- 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 Tallon Properties Ltd for a full award of costs.
 - The appeal was against the refusal of planning permission for the construction of a 2 storey, three bedroom end of terrace house.
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Decision

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

Reasons

2. Circular 03/2009: Costs Awards in Appeals and Other Planning Proceedings advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur wasted or unnecessary expense in the appeal process.
3. The appellant considers firstly that the Local Planning Authority (LPA) misapplied its own policies with regard to plot sizes and displayed an inconsistent approach to the matter; secondly that the external design detailing could have been dealt with through negotiation and should not have been a reason for refusal; thirdly there is no detailed guidance published by the LPA with regard to amenity space, ample space would be provided and in any event the Council misapplied its policies; and finally that there is no evidence to demonstrate that there would be overlooking between the proposed dwelling and No 2 Cliff Approach and the reason for refusal refers to 'perceived' overlooking.

Plot Sizes

4. In terms of plot sizes the Officer's Report correctly states that long gardens are 'a prevailing characteristic' of the area; it does not say that there are no plots that are smaller than their neighbours. The first reason for refusal refers to 'the prevailing character of both plot sizes and rear garden sizes within the surrounding area' and it is clear that the plots for both the proposed dwelling and the host property would be smaller than those which prevail nearby. Reference is made to a redevelopment scheme on a site opposite the appeal site but I have not been given all the details of that proposal and I am therefore unable to conclude that an inconsistent approach has been taken by the LPA or that the LPA misapplied its own policies. The appellant states that

the difference in plot sizes would not be apparent from the public realm, however, even with the provision of a boundary fence, the relationship between the proposed dwelling and No 2 Cliff Approach would be apparent and it would be clear that the length of the 'back' garden would be very short.

External Appearance

5. The LPA correctly concluded that the external appearance of the proposed dwelling as submitted would not be appropriate in this setting. Subsequently an amended plan was prepared by the appellant that would overcome some of the LPA's concerns. However, at the time the decision was taken the Council could not have assumed that its concerns could be overcome. There are significant differences between the submitted and amended schemes, for example there have been major changes to the ground floor layout and to the side garden area, and these could not necessarily have been foreseen by the Council. In any event the amended plan has not been subject to public consultation or Council scrutiny.

Amenity Space

6. In terms of amenity space saved policy HO5 of the Brighton and Hove Local Plan (LP), requires the provision of private amenity space. The Officer's Report describes the garden area that would be provided, compares it to nearby garden sizes and concludes that for a three bedroom dwelling there would not be sufficient private garden. The Council's case is expanded upon in its Statement and I am satisfied that the Council has appropriately applied this policy. It is correct that there are no numerical standards applied by the Council in terms of garden size but an assessment has been undertaken which provides a reasonable basis for the LPA's stance.
7. The Council referred to LP saved policy QD27 in the reason for refusal and the appellant states that this policy has been misapplied. However, the policy is entitled 'Protection of Amenity' and garden land is an amenity. I have therefore accepted the Council's interpretation of this policy.

Overlooking

8. The Council's reason for refusal does refer to 'perceived' overlooking but it also specifically refers to 'loss of privacy' and I consider that because of the short distance between the proposed dwelling and the flank wall of No 2 Cliff Approach, and despite the difference in levels, there would be a material loss of privacy. Even if little weight was attached to the 'perceived overlooking', that would not diminish the weight to be attached to 'loss of privacy' and I am satisfied that the reason for refusal was justified.

Conclusion

9. For the reasons given above I find that unreasonable behaviour resulting in unnecessary expense, as described in the Circular, has not been demonstrated.

David Hogger

Inspector