



Costs Decision

Site visit made on 24 September 2013

by Ms T L Dow BA, Dip TP, Dip UD, MRTPI

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

Decision date: 30 September 2013

Costs application in relation to Appeal Ref: APP/Q1445/D/13/2203332

Pineglade, Bazehill Road, Rottingdean, Brighton, East Sussex, BN2 7DB

- 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 Richard Byrne for a full award of costs against Brighton and Hove City Council.
 - The appeal was made against the refusal of planning permission for; Replacement Garage, Carport, Store and Workspace.
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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. As set out in my appeal decision I have dismissed the development and disagreed with the applicant's assessment of its impact.
 4. The application for costs was not made with reference to any specific paragraphs of the Circular. However, the main concerns comprise both procedural points about how the application was considered and determined, as well as substantive points about the Council's justification for its reason for refusal. I deal with procedural matters first.
 5. In terms of the claim that the Council's pre-application advice was inconsistent with its final decision, there is no evidence to substantiate that the Council acted unreasonably or that misleading information was given. The Revised Design and Access Statement and note about the amendments made to the scheme, makes no reference to pre-application discussions or agreements. The Council says that the applicant did not submit any plans at pre-application stage. If that is the case, it would not have been possible for the Council to have given a fully-informed opinion on the acceptability of the revised proposal. Even if it had done so, such advice would not be binding upon the Council and the application might still have been refused, in which case the appeal would have been necessary.
 6. I have noted that the Council's decision did not follow the advice of its Heritage
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team. However, it is the role of the decision maker to balance all the issues in reaching a conclusion on an application, including those of internal and external parties. The fact that there was an internal disagreement between the teams is unfortunate. However, it is part of the process and a difference in the judgement reached does not invalidate the views of the decision maker. I deal with the substantive point about this aspect of the claim below.

7. The applicant's claim that the Council avoided cooperative dialogue during the processing of the application and refused to respond regarding why they retracted their earlier advice, is disputed by the Council. There is no substantive evidence before me either way on this point. I note, though, that the Council did not seek any amendments to the proposals. Likewise, however, there is nothing before me to indicate that an amended scheme could have been agreed. On the evidence, therefore, it is not clear whether further dialogue would have changed the outcome of the planning application.
8. Turning to the claim on the substantive point, it is quite clear that the Council fully considered the impact of the proposal before reaching its conclusion that the application should be refused. The report fully justifies the Council's decision and I do not find it inconsistent or inaccurate in its reasoning. It clearly separates the issues under consideration, explaining that there are objections on some grounds but not others. It is therefore evident that the Council had regard to the different material considerations but concluded on its merits that the proposal was unacceptable. In terms of the difference in view of the teams, the case turns on a matter of judgement and the decision to disagree with the judgement of the Heritage team has been substantiated in the report. In accordance with the Circular, evidence has been adduced to clearly demonstrate why the development should not be permitted and I do not therefore find that the Council has acted unreasonably in this respect.
9. I therefore find that unreasonable behaviour has not been demonstrated and that the applicant has not been put to unnecessary expense as described in Circular 03/2009.
10. For the reasons given above, I refuse the application for an award of costs.

TL Dow

INSPECTOR