



Costs Decision

by **P Eggleton BSc(Hons) MRTPI**

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

Decision date: 10 January 2014

Costs application in relation to appeals Ref: APP/Q1445/A/13/2198757 and APP/Q1445/E/13/2198762

7 Waterloo Street, Hove, East Sussex BN3 1AQ

- 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 Sir Ronald De Witt for a full award of costs against Brighton and Hove City Council.
 - The appeal was made against the failure to determine both a planning and a listed building application within the prescribed period for a recessed roof terrace and the reinstatement of the dilapidated parapet wall and chimney.
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Decision

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

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of an 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. The appellant claims that the Council acted unreasonably by not providing information as to why the decisions were delayed and in failing to estimate when the decisions would be made.
4. The eight week period for determination of the planning permission expired on 26 March 2013 but the eight week period for the listed building consent application, which was submitted after the planning application, ended on 11 April 2013. An email dated 3 April 2013 advised that the officer was working on the recommendations.
5. An email from the agent on 12 April 2013 was in response to a telephone call from the Council on 10 April 2013. This indicates that the applications were to be recommended for refusal but would not be placed on a committee agenda until an outstanding matter was resolved. This appears to have related to concerns raised by a Councillor regarding pre-application discussions. A letter from the Council on 24 April 2013 states that 'I would be grateful if we could resolve this point prior to the application being determined'.
6. The appellant asked that the applications be put on the first available agenda on 26 April 2013 and the response to that request was made on the same day. It advised that they would be placed on the next available agenda. I have a copy of an email dated 24 May advising that the applications were on the agenda for the 5 June 2013 meeting. The appeal was also dated 24 May 2013.

7. It would seem that the appellant was aware of the progress of the applications at most times. There appears to be a period between 10 and 26 April 2013 when the Council were seeking further information and did not wish to proceed with the applications until it was received. The information sought does not appear to be directly relevant to the consideration of the applications but to administrative concerns raised by a Councillor. From the limited background information I have, it would appear that this delay was unreasonable, particularly as clarification could have been sought separately during the run up to a committee.
8. The correspondence of the 26 April 2013 and more particularly the 24 May 2013 provides information regarding the timeframe for determination. Whilst the first of these emails was not precise, they both provided some certainty that the application was being put forward for consideration by the committee. There is obviously a run up period in the preparation of an agenda. I am not aware of these details but the applications were not placed on the agenda for the next meeting after 26 April 2013 which was the 15 May 2013.
9. The Council clearly did delay the determination by their actions between 10 and 26 April 2013. If I accept that the Council failed to get the applications on the first available agenda following the correspondence of 26 April 2013, then this would represent a further unnecessary delay. However, even if I accept that both of these matters represented unreasonable behaviour, it does not necessarily mean that the appellant was put to unnecessary or wasted expense.
10. I am not persuaded that the appellant was left, following the correspondence of 26 April 2013, in a position whereby it was not clear that a decision was likely in the near future, subject to committee timetables. The appellant chose to appeal on the same day that the actual date of a committee meeting had been confirmed by email. I am not in a position to know whether the appeal was lodged before or after that email was received and the appellant has made no comment on this. However, it was the appellant's decision to submit the appeal, despite the assurances from the Council, that led to the subsequent costs.
11. Whilst the requirements set out in paragraph B10 of the Circular were not fully met by the Council, I do not find that this led to additional costs. The appellant had the opportunity to wait for the outcome of the Council's deliberations and despite the shortcomings within the correspondence and my concerns relating to the period between 10 and 26 April, I am not satisfied that the Council gave insufficient assurance that a decision was imminent.
12. The second concern of the appellant is that a number of documents were ignored by the Council. The appellant states that the second letters from residents of 1 and 49 Lower Market Street were written after the agenda report was finalised and they were not then reported at the committee. The view of the Conservation Advisory Group was not reported in the agenda. I can see no reference in the minutes to it being reported to the meeting as suggested by the Council. It is reported that Councillor Davey said that it was a shame there was no comment from the Group but this suggests to me that he was responding to a lack of any comment rather than reporting their position which was to offer 'no comment'.
13. I find the appellant's views on these matters to be quite compelling. However,

whilst such omissions would represent unreasonable behaviour, they did not prejudice the decision as the Councillors voted to support the applications. I am unclear therefore, what costs resulted for the appellant.

14. The third element of the appellant's application relates to the fact that the officers did not view the roof from within the property and that if they had they may have reached a different conclusion. The form of the valley roof can be viewed from the street and the plans of the architect are of a high quality. Photographs of the views from the windows are dated as having been received with the first application. I am satisfied that a fully informed decision could be reached from this information. I have no evidence to suggest that the officers would have taken an alternative view had they viewed the roof from within the property.
15. The final concern relates to advice that the officers would maintain an objection to the principle of the development for any subsequent applications, even following the resolution of the Committee. The appellant advises that the Area Manager contacted the architect the day after the meeting to invite the submission of applications and I have a copy of a letter setting out the officer's position. This includes an undertaking that the previous resolution would be reported.
16. I find the approach of the officer to be reasonable and helpful. The decision requires a balance between the loss of the original form of the roof and the benefits of the works. The officers are entitled to take a view on this balance and it would be inconsistent if they reached an alternative judgement on the basis of the same information. The same would obviously also be the case with regard to the Committee. I do not find unreasonable behaviour on behalf of the Council in this respect.
17. Overall, I do have a number of concerns with regard to the conduct of the Council. However, the Circular requires that unreasonable behaviour must result in the party applying for costs to incur unnecessary or wasted expense. The appellant chose to exercise the right of appeal in the light of the Council advising that the applications would be included on the next available agenda, with a recommendation for refusal. I do not consider that the actions of the Council led to unnecessary or wasted expense by the appellant.
18. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.

Peter Eggleton

INSPECTOR