



Costs Decision

Site visit made on 4 April 2014

by Martin Andrews BSc(Econ) MA(Planning) DipTP & DipTP(Dist) MRTPI

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

Decision date: 28 April 2014

Costs application in relation to Appeal Ref: APP/Q1445/A/13/2207937 Site at 68a St Georges Road, Brighton BN2 1EF

- 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 Brighton & Hove City Council for a full award of costs against Sussex Property Investments Ltd.
 - The appeal was made against the refusal of planning permission for the demolition of the existing building and roof covering over the site. Change of use and redevelopment to provide 3 x 3 bedroom houses with associated landscaping.
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Decision

1. The application for an award of costs is refused.
2. The application for costs was made and responded to on the basis of Circular 03/2009, which has been superseded by planning guidance published by the Government on 6 March 2014. However, having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the planning guidance.

Reasons

3. The planning guidance explains that costs will normally be awarded when unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 4. The basis of the Council's claim is that with the publication of the Inspector's Decision on a previous appeal for a similar development on the same site (Appeal Ref. APP/Q1445/A/13/2192973 dated 26 September 2013), the appellant should not have proceeded with the appeal. This was because the differences between the two schemes were confined to the fenestration of the proposed dwellings. The impacts of the proposal were the same as previously and had therefore already been considered by the Inspectorate.
 5. However in the earlier appeal the Inspector had accepted the appellant's arguments in respect of the design of the building, thereby removing one of the three objections to the development. It was considered by the appellant that the alterations to the fenestration (an increase in size and the elimination of obscure panels) would address one of the Council's two remaining objections,
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namely the living conditions for future occupiers. It was essentially the combination of a poor level of natural light and a poor outlook which led to the Inspector's rejection of the appellant's arguments on this matter.

6. I have accepted the appellant's case in respect of daylighting because of the improvements made and the calculations submitted. However I have concluded that the outlook from the dwellings would still be of an inadequate standard that would not justify the appeal being allowed.
7. Thus although I have endorsed the previous Inspector's decision on this issue, it was on a narrower basis than considered by him. I consider that this justifies carrying on with the appeal as there was a sufficient difference between the two proposals not to make the decision to proceed unreasonable.
8. In respect of the other objection, the effect on the living conditions for the existing occupiers of Nos. 69 and 70 St George's Road, the appellant considered that further information and plans of the relationship between the two buildings, not seen by the previous Inspector, would nullify the validity of the Council's objection.
9. The Inspector's judgement in the previous appeal was a significant material consideration in my assessment of the current appeal scheme. However in the light of the new plans and further information I concluded that although some harm to the privacy and outlook for existing occupiers would still occur, it would be sufficiently modest not to preclude the development on this basis alone. This outcome in itself makes pursuance of the appeal reasonable.
10. Thus on both issues the appellant had new information and arguments which had not been subject to independent scrutiny at appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the planning guidance, has not been demonstrated.

Martin Andrews

INSPECTOR