



## Costs Decision

Site visit made on 13 January 2015

**by Mr Kim Bennett BSc DipTP MRTPI**

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

**Decision date: 28 January 2015**

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### **Costs application in relation to Appeal Ref: APP/Q1445/A/14/2228623 Land at 146 Islingword Road, Brighton, BN2 9SH**

- 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 Nigel Hughes for a full award of costs against Brighton & Hove City Council.
  - The appeal was made against the failure to determine an application within the prescribed period for the demolition of a single storey commercial building and its replacement with a domestic dwelling house.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may 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's claim is based on the grounds that the application took an unreasonable period to be processed and that he was unable to gain any firm indication as to a likely determination date despite apparent assurances from the Council on repeated occasions that a decision was imminent. The Council has chosen not to submit any response to the costs claim, despite being prompted to do so on two occasions and I have therefore reached my conclusions based on the available evidence before me.
  4. The application was validated in November 2013 with an 8 week deadline for determination expiring in January 2014. It would seem that the Council requested successive amendments/clarification in January, April and July 2014, but in an email dated 31 July from the case officer, he indicated to the appellant that he had written the case up for approval subject to an amendment of the red line application site. Despite not agreeing that such an amendment was necessary, the amended site plan was forwarded. However in the absence of any subsequent decision and despite repeated enquiries, the appellant sent emails dated 16 October 2014 to both the case
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officer and the Head of Development requesting reasons as to the further delay in the issuing of a decision. It would seem there was no response to either email. Instead, an email dated 20 October 2014 was sent by a different officer and advising that a decision would be made that day. A second email confirmed it would be made on the following day. In the further absence of receiving a decision, the appellant sent an additional email to the Head of Development on 24 October 2014. Again it would appear that no reply was received. In the continuing absence of a decision, the appellant appealed against the non-determination of the application on 9 November 2014.

5. Aside from the subsequent late requests for further amendments or points of clarification, it would seem that the Council was in a position to determine the application at the end of July 2014 subject to amendments of the red line site. This seems to have arisen from the change in the roof design requested in April 2014 and therefore should have been picked up at that stage if it was an issue. Notwithstanding, there is no evidence before me as to why a decision was not forthcoming soon after the amended site plan was submitted. Furthermore, despite requests to the case officer and the Head of Development, no replies or reasons were forthcoming. Even when a new officer provided an assurance that the decision would be issued in October 2014, no such decision was received.
6. In the light of the above, I can fully appreciate the appellant's frustration that having complied with repeated requests for amendments over a prolonged period and having been apparently repeatedly assured that the application would be approved, no decision was issued. The PPG advises that examples of the type of behaviour which may give rise to a procedural award against a local authority include a lack of co-operation with the other party or parties, and delay in providing information or other failure to adhere to deadlines.
7. In the absence of any reasons or mitigating circumstances put forward by the Council, I find on the evidence before me that the appellant's grievances are fully justified and fall into the above mentioned categories.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Brighton & Hove City Council shall pay to Mr Nigel Hughes, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to Brighton & Hove City Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties

cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Kim Bennett*

INSPECTOR

