



Appeal Decision

Site visit made on 10 May 2016

by **D Cramond** BSc MRTPI

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

Decision date: 09 June 2016

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3142260 80 Crescent Drive South, Brighton, BN2 6RB

- 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 Mrs Susan Rose and family for an award of costs against Brighton & Hove City Council.
 - The appeal was made against a failure to give notice within the prescribed period of a decision on an application for planning permission Ref BH2015/04014 which sought planning permission for the demolition of existing houses and erection of 7 dwelling houses (C3).
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Decision

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

Reasons

2. Planning Practice Guidance (guidance) 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. The Appellants consider that there was unreasonable behaviour by the Council by reason of delay from the time the planning application was lodged. This resulted in the Appellants having to appeal against the non determination of the planning application. The case is made that the delay caused losses and expenses which could have been avoided. The second concern is that the Appellants consider that they were over-charged for the planning application fee. The argument is made that because the site presently has two residences in situ the planning fee should have given 'credit' for this and related to 5 new planned homes and not the whole 7. It is cited that an adjoining Council calculated a planning fee on this basis.
 4. In response to the Appellants' claim the Council acknowledges that it did not determine the application within the 8 week statutory deadline. The deadline date was the 11th January 2016. The Appellants appealed on the 12th of January. The Council therefore states that the Appellants had to wait an additional day before they submitted their appeal and the argument is made that this additional day did not directly cause unnecessary or wasted expense to be incurred in the appeal process. On the question of the planning fee the Council sets out how its calculation was reached and explains that in its view the calculation is not a net one unless existing buildings are to be retained. It
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- argues by way of example that if one demolishes 2 dwellings and wished to erect 2 new dwellings the application would not be a 'free' one.
5. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full, and indeed, a partial award of costs.
 6. The Council acknowledges that it did not determine the application within the appropriate timescale. I understand that the Appellants wrote to the Council on 30th January 2016 and did not receive a reply in relation to a new target date, the allocation of a case officer, or an explanation concerning the delay. This was regrettable. However the time between this letter and the appeal being lodged was a short one and I do wonder whether a further attempt at dialogue might have been fruitful clear of the Christmas and New Year holiday break. The inference from the Council is that the scheme was going to be refused planning permission, and subsequent papers would certainly back that up, and I have some sympathy with the case that an appeal the day after 8 weeks would have similar costs and very little extra delay relative to an appeal against a decision within this statutory period. Whilst not condoning the apparent inaction of the Council and its delay which is most unfortunate this would not seem to be a case where better communication with the applicants would have enabled the appeal to be avoided altogether. Furthermore there has been no failure by the Council to produce timely, relevant and robust evidence to substantiate its stance against the development during the appeal process.
 7. On the second matter, and in brief, I would deem that the planning fee was correctly calculated by the Council. The full 7 units would be applicable for the charge. There are other instances where 'credit' is given for existing properties – often for example related to financial contributions towards necessary infrastructure or facilities – but the planning application fee process, applied nationally, does not work in this way.
 8. Given all of the foregoing I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR