The Planning Inspectorate

Costs Decision

Site visit made on 11 June 2018

by C. Jack, BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2018

Costs application in relation to Appeal Ref: APP/Q1445/D/18/3198273
12 Rushlake Road, Brighton, BN1 9AD

- 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 John Blackburn-Panteli of Brighton Student Developments Ltd. for a full award of costs against Brighton & Hove City Council.
- The appeal was against the refusal of planning permission for development described as a "retrospective application to regularise the building permitted under Council Ref: BH2011/02592 including alterations to the garage door, an additional window, an additional roof light and an additional handrail".

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 expense in the appeal process.

3. The application for an award of costs on substantive grounds essentially relied on behaviour by the Council in determining the application. Principally it was argued that refusal of the development was unreasonable on the basis that the three reasons for refusal given related to the development being a self-contained dwelling unit. The applicant considered that the application documents were unmistakeably clear that a separate dwelling was not being proposed, and had expressly stated that, "For the avoidance of doubt, the building would remain ancillary to 12 Rushlake Road as per Condition 4 of the Decision Notice granting Council ref: BH2011/02592". I note that the description of development also did not refer to the creation of a separate dwelling, rather to various external works. The application was retrospective, and the works shown had essentially been carried out some time prior to my site visit.

4. The PPG states that examples of unreasonable behaviour by local planning authorities include: failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and providing information that is shown to be manifestly inaccurate or untrue. Furthermore it states that costs can only be awarded in relation to unnecessary or wasted expenses at the appeal, albeit behaviour and actions at the time of the planning application can be taken into account.

5. While the applicant strongly maintained that the appeal building was proposed to be used for purposes ancillary to 12 Rushlake Road, the LPA found the totality of development that had taken place to be tantamount to the creation of a new dwelling. The Council was also of the view that No 12 is a House in Multiple Occupation, rather than a dwelling/house. The reasons for refusal given in the decision notice were complete, precise, specific and relevant to the development that the Council found before it. They also stated the policies of the development plan that the Council found the development to conflict with.

6. The Council's report indicated that permission was sought for the works to the building to facilitate the conversion to a separate dwelling. This was consistently disputed by the applicant. Nonetheless, the reasons given were adequately substantiated by the Council in its officer report, which was relied upon in the appeal. The officer report adequately explained the Council's analysis and reasoning that the development amounts to a self-contained dwelling, and that this would be detrimental to the character and appearance of the area, and the living conditions of future and adjacent occupiers. Even having full regard to the applicant's position that a separate dwelling was not proposed, I am satisfied that the Council was not unreasonable in its determination of the application on the basis of a practical consideration of the planning merits of the application in light of relevant information available to it. This included the extenuating circumstances of retrospective works, and the form and nature of the development that the Council considered has been carried out.

7. In my appeal decision, I dealt rigidly with the application proposal on the basis applied for, and on the basis of the evidence provided to me in the appeal. However, there appears to be some divergence with the appeal scheme and the subdivision that seems to be in effect on site. There is also uncertainty in relation to the current use of No 12. These factors may call into question the delivery of an ancillary use of the appeal building. There was insufficient evidence before me in the appeal to conclude on this matter. I do not know if the Council had additional internal evidence before it at the time of its decision, such as a current HMO licence for the property. However, as the appeal followed the expedited householder procedure, the Council was only able to rely on its officer report and did not have the opportunity to provide further information to support its position in a statement to the appeal. Therefore, while the Council's reasons for refusal contradicted the applicant's stance in relation to the creation of a separate dwelling, I am not persuaded that it has been demonstrated that they were manifestly inaccurate or untrue, given the limitations of the evidence before me.

8. In the appeal, I concluded differently from the Council on the basis of the proposed ancillary use of the building being controlled by condition, which effectively relies upon No 12 being a dwelling/house as was indicated by the nature of the application, but was not verified either way in the appeal evidence. Nevertheless, I am satisfied that the Council was not unreasonable in its refusal to grant planning permission, that its reasons for refusal were not ill-founded based on its assessment of the development, and that it substantiated its position adequately at appeal within the confines of the expedited procedure.

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not

been demonstrated, given the uncertainties pertaining to the use of No 12 and the effects of other works carried out on site but not forming part of the application. For this reason, and having regard to all matters raised, an award of costs is not justified.

Catherine Jack

INSPECTOR