From: Bartlett, Clare <Clare.Bartlett@DMHStallard.com>
Sent: 18 May 2010 09:26
To: Rogerson, Simon
Cc: Hannah Barker; SAskar1056@aol.com; yjosef@josefwhiteman.com
Subject: APP/Y3805/E/10/2124627/NWF AND 2124620 - Norfolk House, Shoreham by Sea
Attachments: 7253736.pdf

Dear Mr Rogerson

Please find attached a copy of the Appellant's claim for costs in relation to the above appeals.

Please confirm safe receipt.

Thanks,

Clare

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DMH Stallard

Application for Costs

Norfolk House, High Street, Shoreham

Appeal Ref: APP/Y3805/E/10/2124627/NWF
APP/Y3805/A/10/2124620

A Top 100 Law Firm

DMH Stallard

Redevelopment of office block with a 72 bedroom hotel and 17 car and 4 cycle parking spaces

Norfolk House, High Street, Shoreham-by-Sea

Application for Costs

on Behalf of

Freebrook Ltd (Appellant)

May 2010

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DMH Stallard Ref: 210051/1

1. Introduction

1.1.1 Paragraph A12 of the Costs Circular 03/09 sets out three conditions which must be met before an award can be made:

- a party has made a timely application for an award of costs;
- the party against whom the award is sought has acted unreasonably; and
- the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Secretary of State or appointed Inspector, or part of the expense because of the manner in which a party has behaved in the process.

1.1.2 Condition (i) is met.

1.1.3 Regarding Condition (ii), paragraph A22 of the Circular sets out a definition of what constitutes 'unreasonable behaviour' which can include the failure by the planning authority to substantiate a stated reason for refusal of planning permission. This is discussed further in paragraph B18 of the Circular which acknowledges that planning appeals often involve matters of judgement concerning the character and appearance of a local area or the living conditions of adjoining occupiers of property. Planning authorities will need to provide realistic and specific evidence to support such reasons for refusal. Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by an objective analysis, are more likely to result in a costs award.

1.1.4 Further, paragraph B19 states that if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so costs may be awarded.

1.1.5 In refusing planning permission for the application, the planning authority failed to take on board the advice of officers and the statutory consultees all of whom commented positively on the proposed development. No conflicting professional advice was presented to the planning authority at the Committee meeting to justify the planning authority taking an alternative view. The application was recommended for approval and had received no objections from the statutory consultees, yet was refused by Committee members on grounds considered wholly unreasonable. None of the four reasons for refusal reflect the professional advice given by officers or the statutory consultees.

1.1.6 Further, the Council's Appeal Statement confirms that the reasons for refusal are all based on unsubstantiated assumptions which have not been validated by any form of objective analysis.

1.1.7 The reasonableness of each of the reasons for refusal is discussed below.

1.2 Reason for Refusal 1

The proposed building, by reason of its excessive size and proximity, would be detrimental to the residential amenities of the adjoining flats, by reason of loss of light and an overbearing effect, thereby conflicting with policy AG1 of the Adur District Local Plan (having regard to the criteria listed under policy AH2).

1.2.1 The professional advice given to Committee members was that the proposed development would not adversely impact on the amenity of neighbouring residents. The Members' assertion that the proposed development would result in the loss of light is not based on any technical assessment of the scheme's impact and this reason for refusal cannot therefore be considered justified or reasonable.

1.2.2 Further, the proposed development also easily passes the '25 degree' test which the Council could have carried out themselves, even at Committee. However, no Committee member even asked about this at the Committee meeting and their consideration that the building would result in a significant loss of daylight was not based on any appropriate assessment or qualified opinion. Instead, the Appellant has now had to go to the expense of instructing a Daylight Consultant to carry out a full assessment of the scheme which concluded that '*all first and second floor windows to the residential accommodation achieved the BRE minimum requirements and would not, therefore, be subject to a noticeable change in available skylight*' (para 4.1 of Daylight Analysis Report). This supports what was already clearly apparent from the plans.

1.2.3 The Council's Appeal Statement simply says that the proposed building '*will reduce the limited amount of light that is already received*' (to Britannia House) with no evidence to support such a claim.

1.2.4 Further, the Council's Appeal Statement states that the proposed building would dominate and overshadow the garden areas to the flats in Riverside House. However, the garden areas face south and the proposed building would be positioned no further forward than existing Norfolk House – this is very clear simply by looking at the plans submitted with the application. During the course of the application's determination, the Council carried out a '45 degree' test to assess whether the building would result in a loss of light to the gardens of Riverside House and it easily passed, and yet in refusing the application Committee members paid no attention to this recognised method of assessing daylight impact.

1.2.5 No evidence has been provided by the Council in their Appeal Statement to demonstrate that there would be any significant loss of daylight to these gardens. As with their assessment of the impact on Britannia House, the Council's consideration that the building would result in a significant loss of daylight to Riverside House is not based on any appropriate assessment or qualified opinion. So this part of the reason for refusal is also completely unsubstantiated.

1.3 Reason for Refusal 2

The site is within an area designated as a Conservation Area and the proposal, by reason of its excessive scale and inappropriate design, would conflict with the intention of the Local Planning Authority to preserve or enhance the character and appearance of the area, and not accord with policies AB4 of the Adur District Local Plan, BE1, BE6 and SCT1 of the South East Plan and PPG15.

1.3.1 Again, this reason for refusal does not reflect the professional advice given to Committee members. English Heritage, the Conservation Officer, The Shoreham Society and the Case Officer all commented positively on the scheme in terms of its impact on the Conservation Area, however this professional advice was apparently ignored when members resolved to refuse the application on this ground. This reason for refusal was not based on any qualified assessment of the scheme, professional advice was ignored and the reason for refusal is therefore considered unreasonable.

1.3.2 In addition to the above mentioned consultees, the planners also confirmed to the design team that the Design Panel's advice would form their official view. The panel concluded in their letter dated 8th December 2009 that, in relation to scale and design, '*generally it was felt that the proposal was appropriate in scale and that a contemporary solution was the correct approach'*. The Committee members have therefore gone against the advice that had been given to the applicant by their own officers with no qualified explanation as to why.

1.3.3 In addition, the Council's Appeal Statement states that the Council are not against a contemporary design yet the reason for refusal refers to the design as being 'inappropriate'. No information is provided to explain this.

1.4 Reason for Refusal 3

The site forms part of a block at the western end of the southern side of the High Street which, as indicated in the Shoreham Renaissance Strategy, should be redeveloped in order to provide high quality replacement buildings which contribute positively to both the street and river scenes (including provision of a riverside walk and enhancement of north-south connections to the river). The proposal represents a form of piecemeal development that would be likely to prejudice future redevelopment of this block to a

satisfactory comprehensive overall plan meeting these objectives, in accordance with policies BE1 and SCT1 of the South East Plan.

1.4.1 None of the consultees have suggested the scheme represents a piecemeal development. Further, no policy documents state that the site needs to be developed as part of a wider scheme. The Shoreham Renaissance Strategy (SRS) identifies the site in isolation and does not suggest that the site needs to be developed as part of a wider scheme. Therefore this reason for refusal is without substance or justification. Indeed, the scheme accords with the aims of the SRS.

1.5 Reason for Refusal 4

Having regard to the Revised West Sussex Parking Standards and the large number of bedrooms proposed, the proposal does not include adequate provision for access and parking of vehicles and the proposal would be likely to increase the pressure for on-street parking in an area where insufficient space is available, with resultant detriment to highway safety and obstruction of the flow of traffic.

1.5.1 Firstly, the Council's Appeal Statement refers to the wrong number of car parking spaces – 17 spaces are proposed not 14. It is therefore not known whether the Committee's consideration of the scheme was also based on a misconception over the number of parking spaces.

1.5.2 Notwithstanding this, the reason for refusal also does not reflect the professional and technical advice given in relation to the transport aspects of the scheme. The Highways Authority raised no objection to the proposed car parking and access arrangements, and stated that there are no grounds for road safety objections with the net additional vehicular movements from the proposed hotel equating to less than 1% of the traffic flow on the A259. The Transport Statement prepared by Colin Buchanon Transport Consultants also states that the proposed level of increase '*can be considered negligible and as such will not have a material impact on the capacity of the adjacent highway network'* (para 2.3.7 of the Transport Statement). No evidence has been provided within the Council's Appeal Statement to explain why, even with all of this information, Committee members, none of whom are qualified transport specialists, decided to disregard all the professional advice they were being given.

1.5.3 In addition, the reason for refusal ignores the guidance contained within PPG13 which states that '*reducing the amount of parking in new development is essential'* (para 49) and *'local authorities should not require developers to provide more spaces than they themselves wish, other than in exceptional circumstances which might include for example where there are significant implications for road safety*...' (para 51.2). The planning authority were advised by the Highway Authority that '*the proposed hotel would only generate a small amount of additional vehicular movements onto the High*

Street over and above that from the existing offices and this would have an insignificant effect on the local road network', *'the hotel site is in a good location to encourage sustainable modes of travel'* and *'there would be no grounds for road safety concerns'*.

1.5.4 No information has been presented to justify the planning authority taking an alternative view to the professional advice it received. The planning authority have also gone against national policy guidance.

1.6 Summary

1.6.1 It is contended that Adur District Council have acted unreasonably in causing the appeal to take place due to refusing the application on grounds which are unreasonable and unsubstantiated. This has put the appellant to considerable expense. An application is, therefore, made for a full award of costs.