From: Keith Morgan
Sent: 21 May 2010 14:53
To: 'teamp13@pins.gsi.gov.uk'
Subject: APP/Y3805/A/10/2124620 and E/10/2124627/NWF
Attachments: PINSRoom3.21costsNorfolkHo.doc

Dear Mr Rogerson,

Please find letter attached in response to the appellant's claim for costs.

2 copies have been put in the post today.

Regards

Keith Morgan

Keith Morgan - Planning Services Manager | Planning, Regeneration & Wellbeing, Adur District Council
Location: Civic Centre, Ham Road, Shoreham-by-Sea BN43 6PR
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Please think before you print this and save paper

Adur District Council

Planning, Regeneration and Wellbeing

Planning Inspectorate (Simon Rogerson)
Room 3/21, Temple Quay House
2 The Square
Temple Quay
BRISTOL
BS1 6PN

Your Refs: APP/Y3805/A/10/2124620 & E/10/2124627/NWF Date: 21 May 2010
Our Ref: ADC/0345/09

Dear Mr Rogerson,

Town & Country Planning Act 1990
Appeals by Freebrook Ltd
Site at Norfolk House, High Street, Shoreham-by-Sea BN43 5EN

I refer to the application for an award of costs made by the appellant's agent, DMH Stallard, attached to your letter of 18 May 2010.

As stated in Circular DCLG 03/09, an award of costs will normally be made where one of the parties has acted unreasonably and the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense either in whole or in part.

As stated in para B18, planning decisions often involve matters of judgement concerning character and appearance and/or living conditions, and para B20 states that planning authorities are not bound to accept the recommendations of their officers. B19 states that design evidence should explain the way in which a proposal fails to promote or reinforce local distinctiveness. The key test is whether the evidence produced at the appeal provides a respectable basis for the authority's stance and is realistic and specific rather than just based on vague, generalised or inaccurate assertions.

In the present case, the planning officer recommended approval but the Committee disagreed and refused the application. Nevertheless, the officer had recognised that the issues involved were not clear cut and that it was a matter of judgement, depending on how much weight was given to the various factors involved, as to whether the proposal was acceptable or not. It is considered that the Committee did not act unreasonably in refusing the application and that there was sound justification for each of their reasons for refusal as explained in the Council's Appeal Statement.

Dealing with the matters that have been raised in the appellant's costs application under each of the grounds of refusal:-

1. Detriment to residential amenity

The officer's report to Committee referred to the main impact being on the flats above the shops to the north of the application site (Britannia House). It referred to the proposed building being higher than the existing one as well as longer and slightly closer and to the effects on privacy and outlook. The officer concluded in respect of the flats most affected *"there will be a minimum distance of 16 metres between the buildings which, on balance, in this town centre location is considered to be acceptable."* It is thus apparent that the officer recognised that the development, in terms of its impact on existing flats, would have a detrimental effect. In this context, it is not considered to be unreasonable for the Committee to disagree with the officer's view and for them to reach the conclusion that the degree to which it would be overbearing, given its large scale and proximity, was sufficient reason to refuse the application. It is worth noting, as a basis for comparison as to reasonableness, that, although the Council has no standards for spaces between buildings that are directly applicable to this case, its DC Standard No.2 'Space Around New Dwellings and Flats', in order to avoid an overbearing effect and ensure adequate outlook and daylight, states a minimum distance of 20m between the rear windows of houses/flats and a three-storey block of flats without facing windows or 28m if there are facing principal windows.

With regard to loss of light, this was an issue raised by neighbouring residents rather than by officers but was a relevant planning matter for the Committee to consider. The DCLG 'Planning Factsheet: Overshadowing' states that "*No practical, reasonable and enforceable design standards have been devised which would allow the full use of land while guaranteeing retention of all daylight for every householder. Where there is a planning application to assess, securing a reasonable degree of daylight for everyone is a task for the expertise and judgement of each local planning authority*."

In lodging the appeal, the appellants subsequently decided of their own volition to instruct a consultant to carry out a Daylight assessment to disprove that part of the Council's ground of refusal. However, the assessment method used and its parameters (for example basing assessment on 12 noon on 21 September as opposed to any other time of day or year) are not incorporated into any planning policy whether at local or central government level (and not referred to in the above Factsheet). It is not necessarily conclusive evidence as to whether a development is acceptable or not in a particular circumstance.

2. Detriment to Conservation Area

Councils have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas (under section 72 of the Planning (LBs and CAs) Act 1990). The absence of any objection from English Heritage, West Sussex County Council's Conservation architect or the Council's own officers, does not necessarily mean that the development must be acceptable. In any case, although he did not object, the officer from English Heritage did not give the proposals his unreserved support, saying it could take more cues from its context and making general comments about the need for design guidance to identify a 'local' Shoreham style and avoid the erosion of the town's character by the international 'anywhere' style of proposals being submitted. As stated in PPG15 (which was in force at the time of the decision), new development should be designed imaginatively and to a high quality but with respect for its context, as part of the larger whole which has a well-established character and

appearance of its own - it should be carefully designed to respect the setting, following fundamental architectural principles of scale, height, massing and alignment, and use appropriate materials.

It is a matter of judgement, which cannot eliminate all subjectivity and which will differ for each site, in assessing the degree to which a new development, in terms of its scale and architectural design, should be expected to fit in with the existing context of the built environment. In this regard, it is considered that the Committee was entitled to consider whether the large scale of the building and its elevational design was appropriate for its context on this most important stretch of waterfront within the Conservation Area. Existing buildings within the Conservation Area are mainly small scale and predominantly traditional pitched roof buildings, so the proposal represents a major departure in terms of its combination of bulk with contemporary style and flat-roofed form. It is by no means clearcut as to whether it would preserve or enhance the character or appearance of the Conservation Area and the Committee had their reasons, as set out in the Appeal Statement, for concluding that it would not do so.

3. Piecemeal development

Piecemeal development was not raised as an issue by the Council's own officers or any consultees. Nevertheless, this does not mean to say that it was not a relevant consideration. It depends upon how much weight is given to 'A Strategy for Shoreham Renaissance' which was adopted as the long-term planning framework for the town centre by the Council's Policy and Strategy Committee on 24 January 2006. That Committee's resolution also included specific reference to agreement to the concept for the 11 key opportunity areas of which the block at the western end of the High Street is number 8. The strategy identified that this block did not provide an aesthetically positive frontage to the High Street or to the river and there was a need to establish a riverside walk. It put it forward as a key opportunity area for redevelopment and, although not specifically referring to comprehensive redevelopment, this is implied in the sketch layout shown which indicates a very wide public area on the riverside with the riverside building relocated northwards onto what is currently the parking area. It is considered that it is a material planning consideration carrying a degree of weight relevant to the decision on the application forming the subject of the present appeal.

4. Inadequate parking

As stated, under the adopted parking standards for West Sussex, the proposal requires a maximum of 74 car parking spaces whereas the plans show only 17 spaces (ie. 23% of 74) NB. it is accepted that the reference to 14 (19%) was an error – although it is unlikely to have affected the Committee's decision. It is acknowledged that PPG13 encourages travel by more sustainable means than by private car and the Committee is well aware of this, having approved small developments in the town centre with only cycle parking provision.

Although PPG13 states that developers should not be required to provide more parking than they themselves wish, it adds "*other than in exceptional circumstances which might include for example where there are significant implications for road safety*." The Committee considered the proposal was such an exception because of its large scale and propensity to attract significant numbers of car-borne clientele into an area where there is severe pressure for car parking. On-street parking is very heavy and time limited to short-term parking (except overnight). Public car parks are small and also time limited (except overnight). On-street parking takes place on the High Street, which is part of a very heavily-trafficked major through route (A259), and does give rise to obstruction of the flow

of traffic and detriment to safety. The appellant's Transport Statement does not contain any assessment of parking demand, only trip generation during the AM and PM peak periods based on general TRICS data. It is considered that the Committee did have reason to go against advice, including from the County Council as local highway authority whose reply was based only on a desk-top study rather than site inspection.

For these reasons and as set out in the Appeal Statement dated 23 April 2010, the local planning authority contends that it has sound planning reasons for each of the grounds of refusal and that they are not unreasonable in the particular circumstances of this case.

Yours sincerely,

Keith Morgan
Planning Services Manager
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