



Costs Decision

No site visit

by Simon N Hand MA

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

Decision date: 24 August 2017

Costs application in relation to Appeal Ref: APP/M5450/X/17/3173114 5 Prestwood Avenue, Harrow, HA3 8JZ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs K Stevens for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the refusal of a certificate of lawful use or development for rear dormer with Juliette balcony and insertion of 3 rooflights on front roof slope.
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Decision

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

Reasons

2. No 5 is part of a terrace of two storey houses and the proposal was to add a third storey by creating a full width rear dormer which would utilise the party wall with the neighbour. The reason for refusal was given as *"the proposed rear dormer which would extend beyond the outside face of the external wall of the original dwellinghouse would fail to be within the tolerances of Schedule 2, Part 1 Class B B.2 (b) (ii) of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended"*.
3. Class B.2(b)(ii) says *"other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse"*. The dormer does not involve any joining of roofs and only the second part could be relevant. In this case the party wall was internal and cannot therefore be an external wall. B.2(b)(ii) would seem to be irrelevant to the development being proposed. No explanation is given by the Council as to why they think B.2(b)(ii) is relevant or why the party wall should be considered to be an external wall.
4. When this was queried by the appellants' agent the Council replied that they didn't think the legislation was meant to allow dormers to be built onto a neighbour's property, but they did not explain why. In the past some Councils have resisted such dormers on the grounds they extend beyond the curtilage of the dwelling and so are outwith Part 1 of the GPDO altogether. The agent sent various appeal decisions where this was discounted to the Council but they declined to comment and suggested an appeal was the only way to determine the difference of opinion.

5. Given that the curtilage argument did not seem to be relied on by the Council, but that no reason was given why B.2(b)(ii), which is clearly not relevant, should be taken into account I cannot but conclude the Council have acted unreasonably. The PPG says that Councils should produce evidence to substantiate their reasons for refusal and in this case they have clearly failed to do so.
6. 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

7. 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 the Council of the London Borough of Harrow shall pay to Mr & Mrs K Stevens the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the 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.

Simon Hand

Inspector