



Costs Decision

Site visit made on 29 January 2019

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2019

Costs application in relation to Appeal Ref: APP/P3610/W/18/3215032 107 Dorking Road, Epsom, Surrey, KT18 7JZ

- 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 Ms S Shelley for a full award of costs against Epsom and Ewell Borough Council
 - The appeal was against the refusal of planning permission for construction of a 1-bed bungalow.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraphs 046 to 049 of the PPG set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations. Other examples include prolonging the proceedings by introducing a new reason for refusal.
4. The appellant has applied for costs on the basis that the Council refused the planning application on new grounds and by imposing reasons for refusal relating to the effect of the scheme on the character and appearance of the area which were not issues in previous schemes, thereby leading to an unnecessary appeal. The Council has not responded to the Appellant's application for costs.
5. An award of costs may be made where an unnecessary appeal or prolonged proceedings are caused by new reasons for refusal. The Council did not introduce new reasons for refusal at the appeal stage, but the effect of the balcony element on character and appearance was the sole reason for refusal, unlike in previous iterations of the scheme.

6. However, the Council's reasons for refusal for previous schemes had included reasons relating to the effect of other elements of the scheme on the character and appearance of the area. These iterations did not include a balcony or included a balcony of a different design.
7. The proposal refused immediately prior to the current appeal scheme had included a balcony, and no reasons for refusal were raised in respect of its effect on character and appearance. However, that balcony was of a different design and was notably smaller than that of this appeal scheme. The reasons for refusal for that earlier proposal related to the inadequate living conditions of occupiers of the host flat on the basis that the balcony did not provide sufficient outdoor space.
8. Whilst the appeal site has an extensive planning history, no previous scheme was the same as that with the currently one proposed balcony. As such, the Council was justified in considering the new element of the scheme on its merits and in introducing a reason for refusal arising from its perceived effect.
9. Whilst I have allowed the appeal, the Council's decision was supported by substantive reasons on the basis of the planning history of the site and its assessment of local character and interpretation of guidance. Although I have concluded differently in this respect, this does not mean the Council had acted unreasonably.
10. For the reasons set out above I find that, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Consequently I conclude that an award of costs is not justified.

Kim Langford Tejrar

INSPECTOR