



Costs Decision

Site visit made on 20 January 2020

by C Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2020

Costs application in relation to Appeal Ref: APP/W1145/W/19/3239042 Westward View House, Galleon Way, Westward Ho!, EX39 1UJ

- 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 & Mrs George Lobb for a full award of costs against Torridge District Council.
 - The appeal was against the grant subject to conditions of planning permission for a side balcony.
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Decision

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

Reasons

2. The NPPG¹ advises that costs may only 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. Some of the matters raised by the appellants refer to the application process rather than the appeal process. Costs applications may relate to events before the appeal was brought, but costs that are unrelated to the appeal are ineligible. Awards cannot extend to compensation for indirect losses, such as those which result from delay in obtaining planning permission.
4. Nonetheless, the NPPG does indicate that costs can be awarded against a Council where a more helpful approach would have resulted in the appeal being avoided altogether. With this in mind, the appellants draw my attention to a case where costs were awarded² by an Inspector. I am not party to the full circumstances of that appeal, but it relates to a situation where planning permission was refused following positive pre-application advice.
5. In the current case, the Council's pre-application advice was also generally supportive of the proposal. However, the design was not fully established by then and the proposal was described by the appellant as a 'veranda' rather than a 'balcony'. The Council indicated that more information would be needed regarding the exact design and that the impact on neighbouring amenity would need to be visually assessed. Therefore, it did not necessarily follow that the proposed balcony should be deemed acceptable.

¹ National Planning Practice Guidance.

² Costs Application: APP/J9497/D/17/3185212.

6. In any case, planning permission was granted for the balcony. Although the Council indicated that the application would have been refused in its original form, the appellants provided a revised proposal which incorporated a privacy screen. As such, the circumstances of the current case are somewhat different from the other appeal quoted by the appellant.
7. The NPPG also advises that costs can be awarded where a Council makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In my view, both the officer's report and decision notice are clear in this respect. Detailed assessments are made of the impact of the proposed balcony on surrounding occupiers and relevant planning policy is quoted.
8. The officer report indicates that the reason for the disputed condition is the effect on the rear garden of No 129 Atlantic Way. Although the reason for the disputed condition refers to 'neighbouring properties' and not just No 129, it is clear enough from the officer's report why the condition was imposed. While the officer's report contains incorrect measurements, I am not convinced that this would have materially changed the Council's assessment of the proposal. Therefore, the appeal would not have been avoided.
9. Even though I allowed the appeal, the issue of privacy is largely a matter of planning judgement which the Council is entitled to take its own view on. This is not an example of a planning authority preventing or delaying development which should clearly be permitted.
10. Overall, I consider that the Council has justified their actions and hence acted reasonably. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

C Cresswell

INSPECTOR