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## Costs Decision

Site visit made on 5 November 2019 by John Gunn DipTP Dip DBE MRTPI

**Decision by R C Kirby BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> March 2020**

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### **Costs application in relation to Appeal Ref: APP/G2815/D/19/3235748 47 Manor Road, Rushden, NN10 9EX**

- 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 and Mrs Mason-Partridge for a full award of costs against East Northamptonshire District Council.
  - The appeal was against the refusal of planning permission for two-storey side extension.
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### **Decision**

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

### **Appeal Procedure**

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### **Reasons**

3. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The Applicants contend that the appeal is only necessary because the authority ignored its own residential design guide and failed to recognise this and the numerous similar approved extensions in close proximity to the property. In the applicants' view the above represents unreasonable behaviour which has led to unnecessary delay and expense in pursuing the appeal.
5. Although the Council did not specifically refer to other properties in the area which had had extensions to the side similar to the appeal proposal, it did acknowledge that there were a variety of dwelling designs in the area. It also described the street as being characterised by gaps between buildings, a feature that I observed also.
6. Whilst I found differently to the Council in terms of the impact of the proposal on the character and appearance of the area, I am satisfied that it substantiated its concerns in respect of this matter, making reference to the relevant policy of the development plan and the guidance within the Residential

Extensions & Alterations Design Guide (DG). The applicants' evidence in defending this aspect of the case was a necessary part of the appeal process.

7. However, insofar as the impact on the living conditions of neighbours is concerned the Council has not provided any substantive evidence for its reason for refusal beyond a generalised assertion that the proposal would affect residential amenity in terms of massing, overshadowing and overlooking. I note that in its response to the application for costs that reference is made to the section of the DG relating to "boundary treatment" and "overlooking and overshadowing", however no analysis appears to have been as to how the proposal would affect the living conditions of the neighbouring occupiers in respect of these matters. Moreover, it would appear that the DG is being wrongly applied by the Council as the section relating to overlooking and overshadowing applies to habitable rooms and has relevance to extensions to the front and rear of the property, which is not the situation with the appeal proposal.
8. Therefore, in respect of the issue of living conditions and for the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated. For this reason, and having regard to all matters raised, I recommend that a partial award for costs is justified.

*J Gunn*

APPEAL PLANNING OFFICER

### **Inspector's Decision**

9. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that the application for a partial award of costs should be allowed.

### **Costs Order**

10. 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 East Northamptonshire District Council shall pay to Mr and Mrs Mason-Partridge, the costs of the appeal proceedings described in the heading of this decision, in so far as they relate to the issue of living conditions only.
11. The applicant is now invited to submit to East Northamptonshire District 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. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*RC Kirby*

INSPECTOR