
Costs Decision

Site visit made on 28 July 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Costs application in relation to Appeal Ref: APP/P1425/W/20/3245997 53 Hillcrest Road, Newhaven, BN9 9EE

- 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 Dr Alice Eldridge for a full award of costs against Lewes District Council.
 - The appeal was against the refusal of the Council to grant subject to conditions of planning permission for a first floor balcony at rear of property.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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.
3. Paragraph 47 of the PPG states that a local planning authority may be at risk of a procedural award if it behaves unreasonably, for example by complying with the requirements and deadlines of the process. Paragraph 049 of the PPG¹ advises that a local planning authority is at risk of a substantive award of costs if it behaves unreasonably with respect to the substance of the matter under appeal.
4. The appellant states that the Council behaved unreasonably by introducing an additional concern in its reason for refusal, namely noise, when the earlier reason for refusal for the application² for the balcony as built did not refer to noise. The latter was larger and closer to the neighbouring boundary, and therefore the inclusion of this additional concern in the reason for refusal was illogical.
5. The appellant also argues that the Council's concerns regarding the effect of the proposed privacy screen on light were in contradiction with the planning officer's report, where it was stated that the window in question was a secondary window to a non-habitable room, as the kitchen benefits from a larger primary window facing east. The Council's decision making was therefore inconsistent, was not based on any objective analysis and relied on vague and

¹ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

² Ref LW/19/0277

generalised assertions regarding amenity impacts which were not adequately explained in the officer's delegated report. The appellant considers that the Council has therefore prevented and delayed development which should clearly be permitted, having regard to its accordance with the development plan, and refused planning permission on the grounds of overlooking when the matter could have been addressed by a condition requiring a screen.

6. The Council was entitled to conclude that the loss of privacy to the occupiers of the neighbouring property through overlooking from the balcony could not be overcome by condition, as it had concerns regarding the impact of the screen on light to that property. The planning officer's report regarding the impact on light is not contradictory, as its first statement relates to the balcony structure rather than the obscure glazed screen. While I have come to a different conclusion on the merits of the case, the Council has provided some explanation of its reason for refusal regarding the amenity impacts, and was entitled to include its concerns regarding the noise impacts at the decision-taking stage, as part of its consideration of the second application. The Council evaluated the application in relation to the development plan and other material considerations and came to its own planning judgement. It had reasonable concerns about the impact of the development and has substantiated them. It is not therefore the case that it has behaved in a way that unnecessarily prevented or delayed development.
7. I therefore find that unreasonable behaviour resulting in unnecessary or waste expense, as described in the PPG, has not been demonstrated.

N Thomas

INSPECTOR