
Costs Decision

Site visit made on 1 September 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Costs application in relation to Appeal Ref: APP/T1410/W/20/3254939 Land south of Langney Shopping Centre, west of Langney Rise, Eastbourne

- 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 Goldeneye Group for a full award of costs against Eastbourne Borough Council.
 - The appeal was against the refusal of planning permission for the development of 9 houses without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. I allow the application for an award of costs in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306).
3. In defence of the appeal, the Council suggest that section 73 is not the correct process for having conditions reconsidered, and that a section 78(1)(a) appeal should have been made against the grant of permission. That is incorrect, and it runs a risk for the developer, whereas section 73 allows the details of the condition to be considered and not the principle of development.
4. The provision of a 'home office' is not unusual and having mind to the timing of the Council's consideration during the Covid-19 pandemic, such provision has taken on a greater importance. Irrespective of whether the move to remote working is continued, the provision of a small room in addition to bedrooms in a house with an 'open-plan' living room is desirable and adds to the design quality of the development.
5. The Officer's Report gave a reasonable summary of both sides of the argument; the risk of the office being used as a sub-standard bedroom and the house becoming a sub-standard 3-bedroom dwelling, against the opinion that the risk had been designed-out through the small size of the resulting 'home office'. The recommendation was clear and well argued.
6. It is the small size, stated in the Officer's Report to be 1.8m by 3.0m, amounting to 5.4m², that should have been the key consideration when the

decision maker reviewed the recommendation and then decided to refuse to amend condition 3) by allowing the substitution of the revision C drawings. That decision taken against the Officer's considered recommendation was unreasonable as it did not demonstrate a robust planning logic or understanding of the situation as presented, and condition 3) should have been amended. The evidence presented in support of the decision was not able to overcome that failing.

7. With regard to condition 17), the subdivision of a room would likely result in a loss of usable floor space through the partition wall, door swings and less flexibility in furniture positions. The reason given for imposing the condition in the first place was not reasonable and doubts persist over enforceability notwithstanding the Council's reference to what might happen at a future sale.
8. However, the Officer's Report recommending the deletion of that condition focussed on the 5 dwellings that would have gained 'home offices' whereas 4 dwellings would have retained the over-large single bedroom. This might be an oversight, but the accompanying Appeal Decision has determined that the use of the condition is not acceptable in any event, and the Council have not been able to refer to any other permissions with similar provisions.
9. Had a robust consideration of the issues been applied, there would not have been a need for an appeal.
10. 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

11. 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 Eastbourne Borough Council shall pay to Goldeneye Group, the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Eastbourne Borough 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.

S J Papworth

INSPECTOR