



Costs Decision

Site visit made on 7 October 2020

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2020

Costs application in relation to Appeal Ref: APP/Z5630/D/20/3249890 11 Cardinal Avenue, Kingston upon Thames, KT2 5RX

- 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 Phil Ryder for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the refusal of planning permission for construction of a side extension and rear extension.
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Decision

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

Reasons

2. The Government's 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. Claims can be procedural-relating to the process; or substantive-relating to the issues arising from the merits of the appeal.
3. Examples of substantive claims are set out in paragraph 49 of the PPG and of relevance to the points raised by the applicant in the application for an award of costs include:
 - Not determining similar cases in a consistent manner
4. The applicant considers that the Council has failed to determine cases in a similar manner with specific reference to a planning permission granted (2017) for a two-storey side/rear extension at No 1 Cardinal Avenue.
5. There are some similarities of this case with the appeal proposal, such as the lack of a 1m set-in from the boundary of the site. However, on the basis of the evidence provided, the extension at No 1 Cardinal Avenue (No. 1) is in fact different to the appeal proposal. The side extension and rear extensions are narrower, and it does not have a single-storey side extension beyond the two-storey side extension. Furthermore, the adjacent number 3 Cardinal Avenue has a single-storey rear extension and the rear extension would not extend beyond the rear elevation of No.3. As I conclude at paragraph 15 of my Decision, the case is not directly comparable to the appeal proposal. The Council's report has not specifically referred to the application at No 1; however, it is not required to undertake a detailed comparison of the two cases. It would, however, have been aware of the application. Furthermore,

the case is not directly comparable to the appeal proposal. Consequently, the Council has not acted unreasonably in this regard.

6. The reasons for refusal clearly identify the harm which the Council considers would arise from the proposal referring to the relevant policies of the development plan and the Council's report expands on these matters. Whilst the applicants may disagree with the Council in terms of its conclusions; I consider that the Council has raised legitimate concerns in an adequate manner and has substantiated the reasons for refusal. The Council has not behaved unreasonably in this regard.

Conclusion

7. For the reasons stated, I conclude that the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

Caroline Mulloy

Inspector