



Appeal Decision

Site visit made on 5 November 2020

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2020.

Costs application in relation to Appeal Ref: APP/R3650/D/20/3248735 West Ridge, Primrose Way, Bramley, Guildford, GU5 0BZ

- 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 Glover for an award of costs against the decision of Waverley Borough Council.
 - The appeal was made against the refusal of an application, Ref WA/2019/2091, which sought planning permission for the erection of a single storey extension.
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Decision

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

Reasons

2. Planning Practice Guidance (guidance) 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.
 3. The Appellants argue that there has indeed been unreasonable behaviour by the Council. In short it is put that the Council failed to take into account the Appellants' clearly set out fallback position. This demonstrated that a similar sized extension could be built under permitted development rights on the rear of the property with the scheme having a Certificate of Lawfulness. The Appellants were willing to forgo this rear extension if the current appeal proposal had been allowed by the Council. Case law on the matter of implementation of a fallback position was ignored and credible explanations were not given. Balance was not used and consideration of the fallback, which it is put would be a very special circumstance to allow the current scheme, did not play a part in determination. Whilst the Council noted that both schemes would cause harm it failed to credit a cancellation effect from not building the fallback scheme through its revocation.
 4. The Council has responded to the Appellants' claims. The case is made that the Officer's Report explicitly considers the material fallback condition cited by the Appellants. The case law referred to was in the minds of officers but given it was considered the fallback would be less harmful than the current scheme there was no delving into this. The report acknowledges that both the extant permission and the proposed development of the Appeal would create the same amount of additional floor space and that both proposals would cause incremental harm to the Green Belt. The point is made that the report concludes that the extension proposed in the appeal scheme would, by
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extending the envelope of the existing dwelling, create greater apparent massing and thus reduce the openness of the Green Belt both visually and spatially. Planning policies are explained and planning conditions are only relevant to be applied where they are necessary to render a scheme acceptable.

5. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses.
6. I have carefully considered the Officer's Report and the Decision Notice along with all the points raised by both parties. I have to say that I found the report to be relatively comprehensive and reasonably constructed. Dimensions are specifically compared and there is reference to the siting and relationship to the dwelling. The reader would be left in no doubt that the 'fallback' had been weighed in balance and indeed that if one had to choose between the two schemes the fallback had slightly less demerit in the officer's eyes. Furthermore the refusal reason is clear and sets out unequivocally the concerns of the Council. The reason cross-refers to the applicable policies and clearly stems from the report. The Council's stance on the use of planning conditions is the correct one.
7. The not unreasonable choice was made to appeal the case rather than develop the permitted scheme. That followed from the changing requirements of the Appellants and in this case I do not find the Council at fault in terms of the outcome or the procedure.
8. In conclusion, the Council's commentary throughout is lucid, sufficiently full and a reflection of the judgement of those who determined this proposal. On the evidence it had available, and against the proper planning policy template, it has provided a respectable standpoint within the reason set out on the decision notice and as the background and justification in reaching that decision; the Council's stance was certainly not in any way irrational.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR