



Costs Decision

Site visit made on 15 December 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

Costs application in relation to Appeal Ref: APP/T1410/W/20/3254323 145A Ashford Road, Eastbourne BN21 3UA

- 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 Mrs Anastasia Heywood for a full award of costs against Eastbourne Borough Council.
 - The appeal was against the refusal of planning permission for conversion and adaptation of existing roof space to permit formation of 2No 1-bed and 2No 2-bed flats within existing footprint.
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Decision

1. I refuse the application for an award of Costs.

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. The accompanying Appeal Decision has attributed substantial weight to the existence of an extant permission for similar development, granted on appeal, and to the Inspector's reasoning in that case. That previous appeal was also the subject of a Costs application and Decision, which found that although there were failings in the presentation of the Officer's Report, omitting reference to the test in paragraph 11d)ii of the Framework and the 'tilted balance', there was no indication that permission would have been granted if it had been explicitly applied. That Inspector concluded that although there were elements of unreasonable behaviour, the appellant did not incur unnecessary or wasted expense; both limbs of the Guidance reference needing to be met.
4. It is clear from the dates involved, that the Council did not have the benefit of the previous Inspector's Appeal Decision to grant permission at the time of the Officer's Report, nor of the Costs Decision which may have prompted the inclusion of reference to the 'tilted balance' and its application. It is noted that the Council did not make further representation to this appeal after the issue of the previous Appeal Decision, and hence did not put the appellant to further expense.
5. In the absence of the compelling findings of the previous Inspector, the Council exercised matters of judgment over the effect on the character and appearance

of the area in a reasonable manner and the lack of specific reference to the adjacent 4-storey building cannot be taken as being ignorance of its existence. Whilst both the previous and the present Appeal Decisions have found no harm in that respect, the Council did not act unreasonably in alleging such harm, and the correct Development Plan policies were cited.

6. With regard to the effect on the living conditions of prospective occupiers, it does appear to be the case that there is no specific Development Plan policy, although consideration of that issue is sought through paragraph 127f) of the Framework and the reference to the quality of amenity for future users.
7. The appellant had offered obscure glazing up to a certain height in response to the previous Reason for Refusal on overlooking, again in the absence of the previous Inspector's Appeal Decision. As it was, that aspect of the Decision was taken on the balance invited under Framework paragraph 11d)ii. However, whether the obscuration of the lower part of the window would cause harm in what is a relatively confined layout is a matter for judgement, which was reasonably carried out by the Council. Whilst mentioned in the Report, the decision not to carry the criticism of the roof lights into the Reason for Refusal which left the criticism of the amount of obscured glazing as a reasonable and legitimate concern.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated with regard to any of the Reasons for Refusal, and an award of Costs is not justified.

S J Papworth

INSPECTOR