
Costs Decision

Site visit made on 23 November 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2021

Costs application in relation to Appeal Ref: APP/H5960/D/20/3254225 94 Hotham Road, London SW15 1QP

- 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 and Mrs Mercate-Butcher for a full award of costs against the Council of the London Borough of Wandsworth.
 - The appeal was against the refusal of planning permission for alterations including erection of roof extension over two-storey back addition, without complying with conditions attached to planning permission Ref 2019/2670.
-

Decision

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

Reasons

2. Planning Practice 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 expense in the appeal process.
3. The application for a full award of costs is made on substantive grounds. The applicant's case rests on the Council's alleged inconsistent approach in not recognising the presence of a previous first floor clear glazed window (the previous window) which was sited in a similar position to the new windows proposed. Consequently, in light of the previous circumstances, the Council failed to consider whether Condition No 5 was reasonable and necessary.
4. The two new bathroom windows have a marginally different position to the previous window serving the first-floor bathroom, a matter that would have been a material consideration in the Council's assessment of the application. Even though I have come to a different conclusion to the Council, they have nevertheless applied their own judgement in assessing the effect of the new windows having regard to separation distances from new rear additions at properties on Empingham Road that were not present previously. Moreover, in judging the effect of these new bathroom windows, they have considered them to be harmful and accordingly imposed an obscure glazing condition to protect the living conditions of neighbours. Consequently, the Council have been reasonable in this regard.
5. The Council, in their assessment, acknowledged the presence of the previous window, yet questioned whether it is lawful in planning terms in the absence of

any evidence submitted to them. Although, I have concluded differently on this matter, I find that there was sufficient basis for the Council to question the lawfulness of the previous window as it was a matter raised by the applicant. Consequently, I am of the view that the Council have not been unreasonable in coming to this view.

6. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

RE Jones

INSPECTOR