



Costs Decision

Site visit made on 13 May 2021

by R. Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021.

Costs application in relation to Appeal Ref: APP/K3605/D/21/3269079 42a The Roundway, Claygate, Surrey KT10 0DW

- 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 Ms Samantha Stewart for a full award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for a single-storey rear extension.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. Planning permission was refused by the East Area Town Planning Sub-Committee against the professional advice of officers. This in itself does not constitute unreasonable behaviour and Members are not bound to accept the recommendation of their officers. An award of costs would only be warranted where the Council cannot produce relevant evidence to show that there were reasonable planning grounds for taking a contrary view.
4. The case made by the appellant is that Members were heavily influenced by local objections and ignored an extant prior approval for a rear ground floor extension, in doing so failing to give it due weight as a fall-back position. The planning application was refused on the grounds that the height and depth of the extension, compared to the prior approval scheme, would result in harm to the living conditions of the neighbours at No.42 The Roundway. It is clear from this and the published Minutes of the East Area Planning Sub-Committee that the prior approval, as a fall-back position, did form part of their consideration of the planning application.
5. While I have come to a different view to the Council, from the information before me, I cannot agree that the Council ignored, or failed to take the fall-back position into account. The weight to be given to any such fallback is a matter for the decision-maker according to the circumstances of a case.

6. However, the PPG explains that local planning authorities are at risk of an award of costs where they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. These circumstances apply here; the Council has failed to produce any substantive evidence to explain its concerns or counter the evidence provided by the appellant.
7. In this case, even on the Council's own figures, the ground floor rear extension would only result in an increase in depth of 0.12m and height of 0.3m over the fall-back scheme. The Council have provided no explanation of why such a modest increase in dimensions would be materially harmful to the living conditions of the neighbours. There is therefore no evidence before me as to why there were reasonable planning grounds for taking a view contrary to the advice of officers.
8. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.
9. Other concerns raised by the appellant concerning the decision-making and conduct of the East Area Town Planning Sub-Committee are beyond the remit of this application for costs.

Costs Order

10. 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 Elmbridge Borough Council shall pay to Ms Samantha Stewart, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Elmbridge 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.

R. Jones

INSPECTOR