



Costs Decision

Site visit made on 4 October 2021

by Baljit K Muston BA(Hons) PGDip MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2021.

Costs application in relation to Appeal Ref: APP/P3610/D/21/3278037 12 Northey Avenue, Cheam SM2 7HR

- 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 N Smith for a full award of costs against Epsom & Ewell Borough Council
 - The appeal was made against the refusal to grant permission for alterations to the roof to replace the existing front roof section with a replacement pitched roof, the conversion of the roof void to create habitable accommodation and the construction of a new dormer to the rear elevation.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded where a party has behaved unreasonably, and where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that planning authorities are at risk of an award of a substantive award of costs against them if they act contrary to, or do not follow, well-established case law, or if they do not determine similar cases in a consistent manner.
 4. The applicant argues that the Council failed to take account of the material 'fallback' position that existed, being the ability to build a dormer window of the same size as the one proposed under permitted development rights. The Council, in its response to the costs application, has cast doubt upon whether this 'fallback' position would be likely to be implemented, by explaining that access to the second floor accommodation provided by the dormer window requires the alterations to the roof at the front of the property, which do require planning permission.
 5. The Council's planning report accepts that "*the proposed volume of the rear dormer alone would not exceed that of permitted development*". However, I agree with the Council in its costs response that this falls short of accepting that the dormer would be likely to be constructed under permitted
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development rights, given that it may not then be easily possible to gain access to it from the floor below. Whilst the report could have explained this more clearly, the applicant's argument about a 'fallback' position seems, from the evidence before me, only to have emerged at appeal stage. This makes it understandable that the Council did not address the matter in its planning report.

6. I conclude that the Council has not acted contrary to, or failed to follow, established case law, by failing to take account of a material fallback position.
7. The applicant has drawn my attention to a number of examples of where the Council has granted permission for large dormer windows, some of which use materials similar to those proposed in the appeal scheme. The Council has set out areas where some of these examples differ from the appeal proposal in its planning report and costs response. Each case must be determined on its own merits, and I am not convinced, from the evidence before me, that any of the cases quoted by the applicant are so similar to the appeal proposal that a decision other than to permit would be unreasonable.
8. I have allowed the appeal. However, this was based on the lack of harm caused, as a result of the effect on the character and appearance of the area of other nearby large dormers, and the fact that such dormers have become an increasingly common feature of many residential areas. It was not because the Council were not entitled to reach a different decision in this case than those it had previously permitted.
9. I therefore conclude that, based on the evidence before me, the Council has not dealt with similar cases in an inconsistent manner
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Baljit K Muston

INSPECTOR