

Costs Decision

Site visit made on 2 November 2021

by Martin Andrews BSc(Econ) MA(Planning) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2021

Costs application in relation to Appeal Ref: APP/A3655/D/21/3278164 36 Hollies Avenue, West Byfleet, Surrey KT14 6AL

- 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 Joan Mills for a full award of costs against Woking Borough Council.
 - The appeal was made against the refusal of planning permission for the demolition of the previously built single storey flat roof extension followed by the erection of a new single storey extension to the front, side and rear of the existing dwelling.
-

Decision

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

Reasons

2. The Government's online planning practice guidance ('the PPG') explains that costs will normally be awarded when unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The appellants' claim for the Council's alleged unreasonable behaviour has four main elements: (i) the officer's assessment was unsound and based on inappropriate guidance; (ii) the appraisal was unrealistic in relation to local circumstances; (iii) the availability of permitted development rights, and (iv) the officer's reasoning lacked clear conviction.
 4. Leaving (i) temporarily aside, I do not find (ii), (iii) and (iv) to be persuasive apropos an award of costs. Local circumstances can provide a useful context for a household development proposal but are rarely so directly relevant that they are the decisive factor as to whether planning permission should be granted or refused. And whilst they can carry weight in the planning balance, in this case my attention was not drawn to a specific permission that was given, notwithstanding the effect on a neighbour's window in circumstances akin to that at No. 34.
 5. The availability of permitted development and the offer of its withdrawal is also capable of playing a part in the decision-maker's considerations, but the proposed development should still stand or fall on its own merits. In this instance I have incorporated the offer of additional conditions for the permission, albeit it is only the fact that they were volunteered that has enabled me to avoid a more rigorous analysis of whether they pass the long-established tests for their imposition. Finally on points (ii) – (iv), the matter of the wording of the officer's reports, I do not regard an issue of semantics as having any substantive bearing on whether the Council has behaved unreasonably.
-

6. Returning to point (i), this is a somewhat more persuasive case for a costs award. The Council's approach essentially appears to be one of reliance on the 25 degree test without any weight given to the window's existing relationship with No. 36, under which the test also fails, or that the extension is not directly opposite the window which is the norm for this test.
7. With that said, I am not convinced the officer was wrong to request a formal daylight assessment, as in my experience such information is often volunteered as evidence to reinforce a case or where there is a dispute. For the reasons explained in my Decision, the assessment would not necessarily have been binding, although it would have been informative and thereby helpful.
8. As to the rest of the officer's report and the communication with the appellant, I regard this as somewhat dismissive, with short thrift being given to the reasonable arguments raised by the agents. It is also clear from the evidence that the officer did not visit the bedroom affected, which in my opinion is essential in order to make a full appraisal that is fair to all parties.
9. Overall, taking account of the fact that the appeal scheme's effect on the living conditions for the occupiers of No. 34 is an important matter to be taken into account, I regard the Council's behaviour as falling well short of exemplary and certainly not best practice in exercising its development management role. However, whilst unsatisfactory, I conclude on balance that 'unreasonable' behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
10. The application for an award of costs is accordingly refused.

Martin Andrews

INSPECTOR