
Costs Decision

Site visit made on 29 October 2021

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 03 December 2021

Costs Application in relation to Appeal Ref: APP/L2250/D/21/3278408 6 Redbrooks Way, Hythe CT21 4DN

- 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 S Winton and Ms D Christie against the decision of Folkestone & Hythe District Council.
 - The appeal was made against the refusal of planning permission for a "first floor side extension".
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Formal Decision

1. I refuse the application for an award of costs against Folkestone & Hythe District Council.

Submissions on behalf of Mr S Winton and Ms D Christie

2. The appellants point out the aims of the costs regime and describe the planning application process, noting such matters as the lack of engagement by the Council, the failure to respond to queries, the slow progress made and the failure to carry out a site visit.
3. The appellants go on to argue that "irrespective of whether this appeal succeeds, the Planning Authority's behaviour has resulted in wasted costs" and they seek an award of the costs of the appeal.

Submissions by Folkestone & Hythe District Council

4. The Council defended their refusal of planning permission, based on the Refusal Notice itself, underpinned by the Officer's Report on the planning application. The Council objected to the proposed extension on design grounds and also raised an issue of potential overlooking of the neighbouring property.
5. The Council did not respond to the application for an award of costs.

Reasons

6. The 'Planning Practice Guidance' 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. Costs cannot be claimed for the period during the determination of the planning application, although behaviour and actions at the time of the planning

application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

7. The Council's apparently routine assertion that they had had due regard to "the duty to work positively with the applicant to resolve potential issues and seek acceptable solutions" is not supported by the evidence. The Council's behaviour during the course of the planning application was unreasonable, in my view, in that they failed adequately to engage with the application process in the way indicated by their own note, as the appellants' submission demonstrates.
8. Nevertheless, the objections to the scheme that were raised by the Council did have some foundation. The Officer's Report explains the Council's design criticisms, while the overlooking issue was a reasonable cause for concern, although it was less significant and was overcome, in any case, by the imposition of a suitable condition.
9. I have not found the Council's design concerns to be justified and I have concluded that the appeal ought to be allowed, in consequence. Nevertheless, I accept that a reasonable submission has been presented at the appeal stage, to justify the Council's decision.
10. I have had regard to the guidance contained in the 'Planning Practice Guidance' (including the guidance given in respect of the local planning authority's handling of the planning application) and, in my opinion, the weaknesses in the Council's case have not been of such a nature as to amount to "unreasonable behaviour" in respect of the appeal itself, bearing in mind the principle that the parties to a planning appeal normally meet their own expenses, and in spite of the Council's poor handling of the planning application.
11. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the 'Planning Practice Guidance', has not been demonstrated and I have refused the application for costs against Folkestone & Hythe District Council.

RC Shrimplin

INSPECTOR