
Costs Decision

Site visit made on 7 December 2021

by L Douglas BSc (Hons) MSc MRTPI

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

Decision date: 24 December 2021

Costs application in relation to Appeal Ref: APP/B1415/W/21/3271660 130 Bohemia Road, Hastings, East Sussex TN37 6RP

- 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 Ken Davis for a full award of costs against Hastings Borough Council.
 - The appeal was against the refusal of planning permission for Extensions and alterations to create a zero carbon two bedroomed dwelling (part retrospective).
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Decision

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

Reasons

2. 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.
3. The applicant seeks a full award of costs on the basis that the Council's refusal of planning permission was based on an incorrect interpretation of a previous appeal decision, which did not take account of the previous layout of the appeal building. This, it is claimed, was illogical and constituted unreasonable behaviour which resulted in the applicant incurring unnecessary or wasted expense in the appeal through the dismantling of scaffolding which will need to be re-erected, the carrying out of temporary water protection measures because the cladding could not be completed, a loss of income from letting the top floor of the appeal building, and the professional costs in appeal preparation.
4. The Council claim that they did not act unreasonably or illogically in their assessment of the proposal. They claim that they referred to the previous appeal decision as a material consideration in the assessment and consideration of the application and clarified their objection to the design of the top floor extension and associated alterations on account of them not being traditional in design, form, character, detailing and materials, referring to the modern design, materials and character of the proposal making the building stand out uncomfortably and noticeable along the street, at odds with the rest of the traditional terrace along Bohemia Road and within the immediate area and streetscape.
5. The Council's appeal statement comprises the text that formed the officer report. These representations contain a confused assessment of the proposal

which includes several seemingly incorrect, irrelevant, and contradictory statements. I found the Council's submissions to be unclear, but my decision accords with their conclusion that the size and location of window openings on the appeal building would harm the character and appearance of the area. I do not share their view that the proposed size, scale, height, mass and form of the proposal and its use of modern external materials would harm the character and appearance of the area, but that does not mean that their conclusions in those regards were unreasonable.

6. Neither of the main parties provided sufficient details of previous schemes they referred to, which may have substantiated their claims and would have provided clarity. This limited the weight I could assign to some of those arguments which were not clearly presented. Both main parties referred to a previous appeal decision, but in the absence of the full details of that scheme the applicant has failed to demonstrate the Council's interpretation of that decision was unreasonable or illogical, as is claimed.
7. The applicant has referred to the costs incurred in carrying out temporary water protection measures, dismantling scaffolding and a loss of income from letting to the top floor of the appeal building, but it appears to me that it was in the applicant's control to avoid all of these issues had development commenced and proceeded in accordance with an extant planning permission. The applicant's costs in preparing the appeal also stem from that error, which does not appear to be due to any unreasonable behaviour of the Council.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

L Douglas

INSPECTOR