



Costs Decision

Site visit made on 2 November 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

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

Decision date: 4 February 2022

Costs application in relation to Appeal Ref: APP/R0335/W/21/3273677 Goaters Hill Cottage, 21 Asher Drive, Ascot SL5 8LJ

- 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 & Mrs Sohi for a full award of costs against Bracknell Forest Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for redevelopment of site to provide replacement dwelling.
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Decision

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

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. As explained in my appeal decision, with respect to paragraph 149 d) of the National Planning Policy Framework (the Framework), neither the Framework nor the Bracknell Forest Borough Local Plan (adopted 2002) provides a specific floor space or volumetric percentage figure as to what might constitute a 'materially larger' replacement building. As such, the decision-maker is afforded an opportunity to apply their professional planning judgement to the proposal before them, subject (as always) to the requirement to act rationally in the legal sense.
4. In doing so with respect to the planning application that came before me at appeal, the Council applied an approach whereby, as a general guide, a replacement building that would result in an increase in the volume of the existing building by more than 20% would be very likely to be regarded as 'materially larger'. The copy of the Council's e-mail of 25 February 2021 demonstrates that the Council also took other relevant factors into account, including the floor area, height, width and depth of the proposed replacement building. As such, the Council correctly considered those factors which are relevant to an assessment under paragraph 149 d). Moreover, as explained in my appeal decision, I also found that the proposed replacement building would be materially larger than the existing building to be replaced, in conflict with paragraph 149 d) of the Framework.

5. Therefore, it is clear that when communicating with the applicants the Council applied paragraph 149 d) in a rational way and fully substantiated their objections to the proposal. The Council's approach mirrors that in the text of the emerging Local Plan but this does not alter the reasonableness of their approach to the specific application which was before them. Similarly, the emerging Local Plan may be at an early stage of preparation (as stated in appeal decision Ref APP/R0335/W/20/3259307) which consequently affects the weight that it may be given in formal decision-making but paragraph 149 d) does not preclude the application of an approach which mirrors that in an emerging Local Plan.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made.

Alexander O'Doherty

INSPECTOR