



---

## Costs Decision

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> February 2022

---

### **Costs application in relation to Appeal Ref: APP/P1425/W/21/3277416 Land rear of 6-12 Tarring Close, South Heighton, Newhaven, BN9 0QU**

- 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 Richard Penaluna for an award of costs against the decision of Lewes District Council.
  - The appeal was made against the refusal of an application, Ref LW/20/0659, which sought planning permission for the demolition of existing double garage and erection of 1 x two-bedroom dwelling with associated landscaping, off-road car parking and cycle parking.
- 

### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (guidance) advises that, irrespective of the outcome of the appeal, costs may only 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 Appellant argues that there has indeed been unreasonable behaviour by the Council. The Appellant notes that although recommended for approval by officers, the Planning Committee were presented with inaccurate information both verbally and in text regarding the height of the boundary wall to the north. The Committee report stated that there will be "...an approx. 6.2 metre high elevation wall flanking the entire rear boundary of No. 6 Tarring Close and part of the rear boundary of No. 8." The Appellant points out this is not correct; only a very small part of the building next to the boundary will have a height of 6.2 metres (the study). The main part of the first floor will be positioned at an angle and therefore set back from the rear boundary; the external walls closest to the boundaries will have a proposed height of 4.8 metres.
  4. The Appellant underlines they had no opportunity to correct this error at the Committee meeting. The case is made that this fundamentally influenced the Committee's decision to refuse planning permission due to loss of light to the gardens to the north. The Appellant, with professional advice, feels any loss of light would not in reality be significant and notes that the officer's report did not raise loss of light as an issue and that no request was made, prior to determination, for an overshadowing study.
  5. The Council accepts that the report text is not wholly accurate but explains that committee members had been in possession of plan packs that included all of
-

the submitted plans for over a week before the committee meeting and that plans were also shared on screen during the committee presentation. The plans clearly show the indent in the northern elevation wall and it is said that the committee members would all have been fully aware of the design of the northern elevation wall and the way it related to neighbouring properties.

6. The Council underlines that the applicant and agent both had the officer report for over a week and both had representations read out at the committee meeting which was held remotely given the pandemic. They were also able to attend the meeting remotely. The Council state that no comments were received in relation to the description of the wall in the officer report and it is not specifically referred to in the reason for refusal. The Council feels that the reason for refusal is sound and based on a complete understanding of the submitted plans and applicable policies.
7. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs.
8. I recognise that an appeal process can be time and fee consuming and I appreciate why in this instance the Appellant felt it was an appropriate route and that professional assistance and specialist evidence should be commissioned at a cost. However, I would say that the Council has given reasons for the judgement it reached. I am not persuaded that refusal arises from an admittedly unfortunate descriptive error by officers, or indeed the regrettable initial failure and then technical inability of the Appellant and professional planning agent to highlight the mistake. Rather, I surmise that the members dealt with the plans before them, and all other material considerations including any positive or negative representations, and reached a not wholly unsurprising or illogical decision on the scheme. Obviously the Members did not follow the advice of the Officers. Nevertheless, to my mind the refusal reason is clear and sets out unequivocally the concerns of the Council and cross-refers to applicable policies. In my opinion the '6.2 metre wall description' error was not the determining factor.
9. As it happens, I agree with the conclusion reached by the Council on the scheme. However, even if I had not, I would nevertheless defend its wording and assertions in the round as not being unsubstantiated and its actions throughout the process as not being irrational.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

*D Cramond*

INSPECTOR