

Costs Decision

Site visit made on 3 May 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Costs application in relation to Appeal Ref: APP/Z3635/W/21/3288997 74 Stanley Road, Ashford TW15 2LQ

- 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 Nathan Ghouri for a full award of costs against Spelthorne Borough Council.
 - The appeal was against the refusal of planning permission for the creation of a new dwelling following demolition of existing outbuildings.
-

Decision

1. The application for costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) makes it clear that parties in planning appeals normally meet their own expenses. It also sets out that costs may only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. With regards to the behaviour of the Council in the process of determining the planning application, it has not been demonstrated that unanswered emails prevented discussion during the application process, indeed it appears that the applicant was able to submit further information in response to the Highway Officer's comments. Therefore, it has not been demonstrated that this resulted in unreasonable behaviour by the Council or led to unnecessary or wasted expense in the appeal process for the applicant.
4. Unreasonable behaviour may include failure by the planning authority to substantiate a stated reason for refusal of planning permission. I have found that harm to the character and appearance of the surrounding area would result and have agreed with the Council's conclusions in large part in this respect. Whilst references to wide plots and front door location are not entirely clear, the Council have attempted to clarify these issues in their appeal statement. It is acknowledged that a site visit was not undertaken by the Council officers, however I have determined the appeal based on the submitted plans and on my own observations during my site visit. The applicant has been able to deal with these matters briefly in their appeal submissions on this issue, therefore, it has not led to unnecessary or wasted expense in the appeal process.
5. The second reason for refusal relates to impact upon privacy. The Councils delegated report, appeal statement and response to the costs application are

vague regarding the obscure glazing of the first floor rear windows. They do not explain why they accept that a condition to secure this would address potential loss of privacy regarding No 76, but not regarding 74, regardless of the distances involved. Given this I find that the Council has failed to substantiate this reason for refusing the application. Accordingly, whilst I do not agree that it is necessary to employ a planning consultant to submit an appeal, the applicant's time and expense in defending this matter was not necessary and has resulted in unnecessary or wasted expense on his behalf.

6. In light of the foregoing, I find that in respect of the second reason for refusal unreasonable behaviour, resulting in unnecessary or wasted expense has been demonstrated. A partial award of costs is therefore justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Spelthorne Borough Council and shall pay to Mr Nathan Ghouri, the costs of the appeal proceedings limited to those costs incurred in respect of defending the second reason for refusal relating to living conditions, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
8. The applicant is now invited to submit to Spelthorne Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

B Phillips

INSPECTOR