

---

## Costs Decision

Site visit made on 22 July 2022

**by Roy Curnow MA BSc(Hons) CMS MRTPI**

**An Inspector appointed by the Secretary of State**

**Decision date: 11 August 2022**

---

### **Costs application in relation to Appeal Ref: APP/A3655/X/21/3284037 29 Beaufort Road, Maybury, Woking GU22 8BZ**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Woking Borough Council for a full award of costs against Mrs Navidia Hussain.
  - The appeal was against the refusal of a certificate of lawful use or development for Roof dormer window that serves a shower room.
- 

### **Decision**

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

### **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. The start point in assessing whether an application for an award of costs in planning appeals is that each party bears its own costs.

#### *The Council's case for an award of costs*

3. The Council cites the Government's Planning Practice Guidance, in particular its paragraph 52<sup>1</sup>. This sets out examples of unreasonable behaviour that might lead to an award of costs against an Appellant. Amongst these is "providing information that is shown to be manifestly inaccurate or untrue".
4. The Council states that the Appellant's evidence in respect of the 4-year period in which enforcement action could be taken was "unsubstantiated and incorrect in law" and "manifestly untrue". It goes on to say that had the Appellant reviewed all of the evidence, this would have shown the weakness of her case. That the appeal was made amounted to unreasonable behaviour which led to unnecessary expense in defending the appeal.

#### *The Appellant's response*

5. The Appellant responded to the costs claim in her Final Comments. She says that she has paid a considerable sum of money on planning and legal experts to exercise her legal position and to stop the Council acting unlawfully. The

---

<sup>1</sup> Reference ID: 16-052-20140306, Revised 06-03-2014

Council, she says, is persecuting her, as they will not take formal enforcement action against the dormer.

*My Assessment of the Claim*

6. That the Appellant paid considerable sums of money on advice, including legal experts – though this was not provided in evidence, does not automatically mean that the case she put forward was reasonable.
7. Whether or not the Council decide to address the breach of planning control through enforcement action is not a matter for me. The same applies to the actions of its housing management company. The question before me is whether the Appellant's actions in her appeal against the refusal of a certificate of lawfulness were reasonable.
8. The main thrust of her case was that the dormer was not subject to the terms of condition 3 attached to PLAN/2017/0257, as the dormer was substantially complete prior to the decision being issued. Photographic evidence provided by the Council shows that, on the balance of probability, this was not the case.
9. I appreciate that her position seems to have been, in large part, based on the findings of an earlier agent. However, no evidence was provided of how he reached this position. In any event, it is incumbent upon an appellant and their agent to be sure of their case before making it.
10. She makes the point, in her SoC, that the Council might have invalidated her application on the basis of a lack of information, or asked for additional information to be submitted. From what I have seen, the application was complete and there would have been no reason to invalidate it. On the latter point, it is for Applicants to make their case; whilst the Council might have asked for more information, it was not obliged to do so. That it did not cannot be held against it.
11. The case put forward by the Appellant was based on a fundamentally incorrect premise. This amounted to unreasonable behaviour that led the Council to unnecessary expense in defending the appeal.

**Costs Order**

12. 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 Mrs Navidia Hussain shall pay to Woking Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. Woking Borough Council is now invited to submit to Mrs Navidia Hussain, to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

*Roy Curnow*

Inspector