

Costs Decision

Site visit made on 6 September 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 27 September 2022

Costs application in relation to Appeal Ref: APP/K3605/X/21/3278732 Land at 29 Sarum Green, Weybridge, Surrey, KT13 9RZ

- 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 Mr James Powell for an award of costs against Elmbridge Borough Council.
 - The appeal was against a refusal of an application for a lawful development certificate dated 23 June 2021 for proposed front dormer window, conversion of garage into living space and alterations to fenestrations following demolition of existing front dormer window.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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 Guidance gives examples of when a Council may be at risk of an award of costs being made against them. Examples include where they fail to carry out adequate prior investigation and it is concluded that an appeal could have been avoided by more diligent investigation or there is a failure to review their case promptly following the lodging of an appeal as part of sensible ongoing case management, or preventing development which should clearly be permitted.
4. The Appellant argues that the Council has acted unreasonably in failing to assess the extent of the highway and treating the site in the same way as other houses on the street which unlike the appeal site front a highway. He argues that the Council disregarded manifest circumstances of the case. He says that the facts were clearly spelt out in the application and that he reminded the Council of the salient facts before the application was refused.
5. The Council's response is that the fact that they reached a different conclusion on the interpretation of permitted development rights and the Technical Guidance does not constitute unreasonable behaviour. They say that they acknowledged and responded to the Appellant's representations.

6. In my substantive decision I conclude that the Council's decision to refuse the application was not well founded. I disagree with the Council's conclusion that the proposed development fronts onto a highway. But the fact that I disagree does not of itself make their judgement unreasonable. The issue in dispute was a matter of fact. The Council had to make a judgement on the circumstances before them taking into account relevant considerations. The Council took account of the Technical Guidance and provided an explanation of their reasoning. They did not disregard the circumstances of the site. Although they made reference to other properties nearby they did this in the context of considering the issue of whether the appeal site fronts a highway. They did not fail to carry out adequate prior investigation or fail to review their case as part of ongoing case management. The point at issue was capable of differing interpretations.
7. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has not been demonstrated. An award of costs is not justified and the application should be refused.

S. Prail

INSPECTOR