



Costs Decision

Site visit made on 7 February 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2023

Costs application in relation to Appeal A Ref: APP/Q1445/D/21/3288671

- 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 Alex Bateman for a partial award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of the Council to grant prior approval for an application of prior approval under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for an additional storey over the original footprint of the two-storey dwelling to create a three-storey dwelling.
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Costs application in relation to Appeal B Ref: APP/Q1445/D/21/3288579

- 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 Alex Bateman for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of the Council to grant prior approval for an application of prior approval under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for an additional storey over the original footprint of the two-storey dwelling to create a three-storey dwelling.
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Decision

1. The applications for award of costs are allowed in the terms set out below.

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. The PPG sets out that a costs application can be made on both procedural and substantive grounds. For these two cases, there is an application for a partial award of costs on substantive grounds for Appeal A, and an application for a full award of costs on substantive grounds for Appeal B.
4. Examples in the PPG of the types of behaviour that would be unreasonable in this regard include such matters as not determining cases in a consistent manner, acting contrary to well-established case law and preventing or delaying development which should clearly be permitted having regard to the material considerations.

5. Chronologically, the scheme for Appeal B came first, with the scheme for Appeal A being a consequence of that initial decision. I have therefore considered the applications in that order.

Appeal B

6. The dispute in this appeal centred on whether the proposal would constitute an additional storey for the purposes of Class AA.
7. Paragraph AA4.(2) does two things for the purposes of Class AA. Firstly, it says what a 'storey' does not include, which is (a) a storey below ground level; and (b) accommodation within the roof of a dwellinghouse, whether it comprises part of the original dwellinghouse or created by a subsequent addition or alteration. There was no dispute between the main parties that the loft space of the dwelling, at the time of the application, did not form a 'storey'.
8. Secondly, Paragraph AA4.(2) goes on to state that an 'additional storey' (which is what was being applied for) includes a storey constructed through Class AA and which replaces accommodation within the roof of the existing dwellinghouse. Therefore, it seems on the face of it that, providing additional accommodation principally within what was the roof of the existing dwelling was not, as was suggested by the Council, outside the scope of an additional storey under Class AA.
9. Furthermore, whilst there is clearly some overlap between what might constitute a new storey and an enlargement of a dwellinghouse consisting of an addition or alteration to its roof (a 'loft conversion') there is no explanation as to why the Council considered that the proposal might fall to be assessed under Schedule 2, Part 1, Class B of the GDPO. Raising the roof height, which the scheme proposed, takes such works outside the scope of Class B but not outside the scope of Class AA.
10. In addition to increasing the height of the main roof, a new storey would conventionally entail a number of further elements to distinguish it from a loft conversion, such as raising the wall plate or eaves level. Whilst these are not a definitive or exhaustive list and will no doubt vary from property to property, they provide useful references to indicate that what is proposed is more than a loft conversion under Class B. In this case, the raised eaves, wall plate and ridge heights, whilst not extensive, would be evident when viewing the property. Therefore, I find that what was proposed should not have been rejected as being both outside the scope of Class AA and an alteration to be assessed under Class B.
11. I acknowledge that the proposal was not what might conventionally be considered an additional storey and may not have been what was entirely envisioned when the GDPO was drafted. However, it seems to me that in refusing the application for the reasons that it did, the Council failed to fully consider the proposal and the extent to which it would fall within the specific terms of Class AA.
12. There were no other reasons for refusal or other indications as to the proposal being harmful. Indeed, the correspondence with the Council suggests it was content with the appearance of the scheme and was prepared to positively deal with the matter through a householder application as an alternative means of securing these additions to the dwelling.

13. It therefore follows that there was a strong probability that if the assessment as to what counted as an 'additional storey' had been consistent with Paragraph AA4.(2) and not been diverted by considerations of Class B, the prior approval application would have been approved. In such circumstances, the appeal would have been averted.
14. I therefore find that the Council's behaviour was unreasonable and resulted in unnecessary expense, as described in the Planning Practice Guidance. On that basis, a full award of costs is justified in relation to Appeal B on substantive grounds.

Appeal A

15. Correspondence from the Council dated 6 October 2021 notes that during its consideration of the first prior approval application, the Council was assessing whether there was an argument that the proposed alterations were not solely to the principal part of the dwelling, as required by Paragraph AA.1.(i). Neither the subsequent officer report nor decision notice in relation to the first scheme made reference to this issue. As a result, it was reasonable for the applicant to infer that, in the Council's opinion, the scheme did not go beyond the principal part of the dwelling.
16. However, the second scheme was refused partly because it was said to go beyond the principal part of the dwelling, and in particular would build over the front gable. The essence of the applicant's claim is that both schemes included building over the front gable. It is claimed that had this issue been included as a reason for refusal for the first scheme, then the second scheme would not have been pursued, or certainly not in the form that it was.
17. There seems little doubt that the second prior approval scheme was not the applicant's preferred option. However, it appears to have been largely driven by a desire to secure any form of approval from the Council to increase the height of the dwelling. As a result, the second application does seem to have been guided to a large extent by the correspondence with the Council and the reason for refusal for the first scheme.
18. Had the Council included the 'principal part' issue in its reasons for refusal on the first scheme, it seems to me that one of two things would have happened. Either it would not have been possible for the applicant to reconcile a full height additional storey without including works to the gable and so a second application was not submitted; or that a different scheme came forward to the one that was actually submitted. Even if the Council had subsequently refused such an alternative scheme for other reasons, it seems unlikely that the applicant would have put forward an alternative scheme where the principal part of the building was in question.
19. In these circumstances, given that the second refusal introduced this new reason for refusal, and as there is no evidence from the Council to indicate why it reconsidered the issue or why it came to a different conclusion second time around, the appellant could do little else other than to appeal the decision. I therefore find that the Council was inconsistent in its approach and that this amounted to unreasonable behaviour, as described in the Planning Practice Guidance. I am satisfied that this has resulted in unnecessary expense for the applicant in having to defend the first reason for refusal at appeal and so a partial award of costs is justified on substantive grounds.

Costs Order

20. 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 Brighton & Hove City Council shall pay to Mr Alex Bateman, the costs of the appeal proceedings for Appeal B; and the partial costs of the appeal proceedings for Appeal A, limited to the costs in relation to defending the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to Brighton & Hove City 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.

Stewart Glassar

INSPECTOR