



Costs Decision

Site visit made on 8 February 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 MARCH 2023

Costs application in relation to Appeal Ref: APP/F3545/W/22/3306069 26 Angel Hill, Bury St Edmonds IP33 1UZ

- 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 Julian Thake, PCM Group for a full award of costs against West Suffolk Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for Planning Application - a. ground floor retail unit; b. four flats on the first and second floor. (Revised submission to DC/18/0068/FUL to allow for amended window details, including for bedroom windows on the rear elevation to be fixed shut, provision of external ventilation grilles, and retention of first floor external maintenance door on the rear elevation). As amended by details received on 22 and 29 November 2021.
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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.
3. The applicant has applied for a substantive award of costs on the grounds that the Council behaved unreasonably by making vague, generalised assertions regarding potential effects on amenity, which were not supported by any objective analysis, and which could have been adequately controlled by conditions, as encouraged by paragraph 55 of the National Planning Policy Framework.
4. Although Planning Committees are entitled to reach a different view to that of their professional advisors, such views must still be substantiated. The reason for refusal claims that the introduction of an access door to the flat roof area would foreseeably lead to residents utilising this space. No evidence has been provided to substantiate this assertion. There is no direct access to the flat roof area from any of the flats. The door in question is required to provide access for essential maintenance purposes only and is kept locked and alarmed at all other times. Occupiers of the flats do not have a key to this door. The occasional access to the roof, to undertake essential maintenance, such as clearing leaves that fall from the adjacent large mature trees and carrying out repairs/maintenance of the roof and windows, would not result in harm to the living conditions of neighbouring occupiers.

5. The reason for refusal also claims that the concerns regarding residents accessing the roof could not be adequately controlled by planning conditions to make the development acceptable. No evidence has been provided to substantiate this claim and planning conditions are frequently used to restrict the use of flat roofs.
6. The only other means of access to the roof, from the site, is via the windows in flat 2. Evidence of unauthorised use of the flat roof resulting in harm, would most likely lead to the serving of a breach of condition notice, which cannot be appealed and could result in prosecution. Consequently, it would be in the owner's best interests to strictly control the use of the flat roof and the access door to it.
7. The Council has also behaved unreasonably in assessing the planning balance, incorrectly. The Council weighed only the benefit of the access door, as opposed to the benefits of the development applied for as a whole, against the alleged harm to the amenity of the neighbouring property.
8. The Council's only concern could have been addressed through the use of planning conditions, which would have avoided the unnecessary expense of the applicant in engaging professionals to prepare and submit an appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 West Suffolk Council shall pay to Mr Julian Thake, PCM Group, 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.
11. The applicant is now invited to submit to West Suffolk 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.

R Bartlett

INSPECTOR