
Costs Decision

Site visit made on 13 June 2023

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2023

Costs application in relation to Appeal Ref: APP/X1165/W/23/3315657 Korean Martial Arts, 37 Tor Hill Road, Torquay TQ2 5RY

- 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 Brian Jones for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for conversion of derelict basement and small area of wasteland into two flats with outside garden space.
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Decision

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

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 applicant is applying for a full award of costs and considers that the Council acted unreasonably by not acknowledging the submission of the Revised Daylight Assessment and by basing their decision on a subjective judgement.
4. In response, the Council disagree that they have acted unreasonably as the original Daylight Assessment submitted with the planning application did not take into account the obscure glazing of the windows. They also state that they have provided sufficiently clear reasoning for their decision based on policies within the development plan.
5. The applicant may disagree with the Council's assessment and decision. However, this does not mean that the Council acted unreasonably in refusing planning permission before the submission of the Revised Daylight Assessment. The Council subsequently commented on the revised assessment in their Appeal Statement providing reasoning why it did not address their concerns. The appeal provided an opportunity for the applicant to test the position with regard to the living conditions for future occupiers and explain their case.
6. The Council produced evidence to support their decision in relation to the effect of the proposal upon living conditions of future occupiers and set out a reason for refusal based on conflict with the development plan. Although I have found in the applicant's favour in my main Decision in relation to this matter, it was not unreasonable for the Council to reach a different view.

7. In light of the above, I do not find that the Council acted unreasonably as they acknowledged the submission of the Revised Daylight Assessment and made an informed assessment of the proposal adequately justifying their concerns regarding the effect upon the living conditions of future occupiers.
8. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
9. The application for an award of costs must therefore fail.

C Rose

INSPECTOR