
Costs Decision

Site visit made on 7 August 2023

by Rebecca McAndrew, BA Hons, MSc, PG Dip Urban Design, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.11.2023

Costs application in relation to Appeal Ref: APP/P3610/D/23/3320972

49 Lower Hill Road, Epsom, Surrey KT19 8LS

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Birch for a full award of costs against Epsom and Ewell Borough Council
 - The appeal was against the refusal of consent for the use of an existing incidental outbuilding to provide ancillary residential accommodation.
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Decision

1. The application for an award of costs is dismissed 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 appellants submit that the Council has acted unreasonably as it assumed that the proposed bedroom would result in the building being used as a separate dwelling, rather than treating it as an application for the use of the outbuilding for ancillary purposes. This resulted in the refusal of planning permission on the grounds of harm to the living conditions of the neighbouring occupiers. The appellants' case is that, had the Council confined its considerations to the development applied for then permission should have been granted thus avoiding the appeal and the applicants' expense of pursuing it.
4. Whilst I have allowed the appeal, in the face of the previous appeal decisions where the Inspector found the cabin to be an independent residential unit, I understand why the Council may have considered the proposal in front of it not to be ancillary accommodation. In view of this planning history, I consider that the Council did not behave unreasonably in judging the building, including the proposed bedroom, to be a separate residential unit.
5. The appellants also contend that the Council behaved unreasonably by failing to undertake a site visit to properly consider the proposals. I note that the Council unsuccessfully attempted to arrange to visit site and were under pressure to issue a timely decision. Also, the Council states that, due to the

planning history of the site, they have many photographs and that Officers were already familiar with the property. It therefore did not consider that a site visit was imperative. I am satisfied that in this case, given the site history, it was not necessary to visit the site. I therefore do not find unreasonable behaviour in this respect.

6. The appellants state that the Council behaved unreasonably as it failed to determine the application in a manner consistent with other similar applications. The appellants' statement includes details of other planning applications which have been determined by the Council in support of their case. However, these cases appear to differ from the appeal proposal. For example, they are all substantially smaller than the appellant's building. In any event, every proposal is considered on its own merits. I therefore do not consider that the Council behaved unreasonably in this respect.

Conclusion

7. As outlined above, I find that the Council did not behave unreasonably by considering the proposal would result in the building being used as a separate residential unit. Additionally, it was reasonable not to undertake a site visit. I also find the Council was not inconsistent in its approach to decision making. This application for an award of costs is therefore dismissed.

Rebecca McAndrew

INSPECTOR