



## Costs Decision

Site visit made on 18 January 2024

**by Michael J Muston BA(Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 February 2024**

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### **Costs application in relation to Appeal Ref: APP/A3655/D/23/3333170 51 Waldens Park Road, Horsell, Woking, Surrey GU21 4RW**

- 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 & Mrs Shankla for a full award of costs against Woking Borough Council.
  - The appeal was made against the refusal of the erection of a 1.5 storey annexe outbuilding to the rear of No.51 Waldens Park Road and associated sunken terrace and fencing.
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### **Decision**

1. The application for a full award of costs is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG makes it clear that planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations. As examples of behaviour that may give rise to a substantive award of costs against a local planning authority, the PPG also lists failure to produce evidence to substantiate each reason for refusal on appeal, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, refusing planning permission on a planning ground capable of being dealt with by conditions, and not determining similar cases in a consistent manner.
4. The appellants argue that the Council has applied Policy DM9 of the Development Management Policies DPD (the DPD) inconsistently, having regard to a materially similar application for a garage and art studio (PLAN/2021/0408), which was permitted. Policy DM9 deals with flats above shops and ancillary accommodation. All of the part of the policy that deals with ancillary accommodation relates to "*ancillary residential extensions*", and the reasoned justification in paragraph 5.3 is in relation to units to accommodate additional relatives or staff. Neither the policy nor the reasoned justification contains any text about other types of ancillary accommodation. I accept that,

as a result, the scope of Policy DM9 is not entirely clear. However, I do not consider that treating applications for a garage and art studio on the one hand, and for an annexe on the other, differently in relation to this policy amounts in itself to unreasonable behaviour.

5. In the Planning Statement submitted with the application for the annexe, the applicants made the point that the permitted garage and art studio could be completed and then converted internally into an ancillary annexe, without the need for further planning permission. They further made the point that this amounted to a fallback position that could be implemented should the application be refused.
6. The Council's delegated report dealt with this matter by stating as follows:  
*"planning permission has been granted for a detached domestic garage of a similar form and appearance in the same location as the proposed dwelling. However this is not considered to constitute a fall back position as the erection of a dwelling and the subdivision of the plot is an entirely different form of development than a domestic ancillary garage and has an entirely different impact on character and appearance. The proposed development is not therefore considered comparable to the previously permitted garage and the proposal has been assessed on its own merits. The proposed dwelling would clearly not read as a domestic garage; the dwelling would have a front door and all the residential paraphernalia and activity associated with its occupation as a separate self-contained dwelling and would clearly read as such from Berry lane."*
7. This paragraph, dismissing the idea of the existing permission for an ancillary building amounting to a fallback position, demonstrates the problem with the Council's approach. Instead of considering what has been applied for, it makes the assumption that what is proposed is a separate self-contained dwelling and that the plot would be sub-divided. This results in incorrect conclusions being drawn as to whether the existing permission for an ancillary building can be considered a fallback position. I appreciate that Policy DM9 contains a sentence that *"freestanding, independent accommodation will be treated in the same way as a proposal for a new dwelling"*. However, the applicants have made it quite clear that their proposal is not for independent accommodation, but for an annexe.
8. Dealing with the application as for something other than what was applied for has led to the Council not giving weight to the fallback position as a material consideration. It has also resulted in the second reason for refusal, dealing with the effect on the Conservation Area, incorrectly describing the proposed development as including a *"proposed plot division"* and being a *"proposed dwelling"*, and consequently drawing inaccurate conclusions about the harm that would result.
9. If the Council had not dealt with the application in this way, it may also have concluded that its concerns could be dealt with by the imposition of appropriate conditions, as I have in the appeal decision. Overall, as a result of all of the above, the Council has prevented the development by refusing permission, when it should clearly have been permitted. This amounts to unreasonable behaviour, justifying a full award of costs.

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 Woking Borough Council shall pay to Mr & Mrs Shankla, 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 Woking Borough 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.

*Michael J Muston*

INSPECTOR