



Costs Decision

Site visit made on 22 July 2024

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI
an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Costs application in relation to Appeal Ref: APP/J1915/D/24/3342719 8 Moat Side Anstey Buntingford SG9 0DD

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Bullen for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for Removal of rear canopy roof and conversion of loft to habitable space with 2 rear dormer windows and 2 front rooflights.
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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 for costs points to the behaviour of the Council in introducing a reason for refusal which had not been given on a previous, near-identical planning application. The Council have not submitted any rebuttal.
4. The appeal site lies within a Conservation Area and adjacent to a listed (Grade II) building, with a scheduled monument to the south of Moatside yet, despite the presence of these three designated heritage assets and the general duties consequent¹, the previous decision was made and published without the benefit of comment from the Council's Conservation Officer, as the Council acknowledge, such that the reason for refusal of that application were limited to issues of impact on neighbour amenity.
5. The applicant for costs, not unreasonably, expected that a second planning application which sought to address the previous reason for refusal by the use of obscured glass, non-opening lights and additional rooflights to the front elevation might be favourably received. However the Council refused this application (Ref 3/24/0155HH) on the basis of new reasons including the substantive impacts upon designated heritage assets as set out in the Conservation Officer's response.
6. The Courts direct that 'unreasonable' should have its ordinary meaning when considering the behaviour of parties and in this case it was the not-

¹ In particular those set out in Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

unreasonable expectation by the applicant that the expense and trouble of a second application should not be confounded by matters which the Council had neglected to address adequately in their first consideration of the proposed development, a proposal which was substantively identical to that which is the subject of this costs application. The applicant was denied the opportunity to consider (and possibly prepare) a design which sought to address legitimate concerns as to the impact on heritage assets and thereby incurred wasted expense in conducting this appeal.

7. In addition, whilst it was not unreasonable for the Council be additionally concerned as to the effect of introducing obscured glazing to the dormer window of the proposed bedroom, the officer report confusingly states: "Whilst 2no. front rooflights are proposed to provide natural light, due to the limited number, size, scale and design they would not be able to provide sufficient natural light compared to a normal window". This fails to acknowledge that the 2 rooflights would be additional to the proposed dormer window (which would itself admit light to a significant degree²) or demonstrate an understanding that rooflights set in the plane of a sloping roof will admit significantly more daylight than the equivalent area of glass in a vertical plane. The refusal reason refers to the impact of obscured glazing on living conditions but the Council do not explain what that effect is or how it arises. This part of the refusal reason is inadequately justified.
8. Taking these together, I 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

9. 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 East Hertfordshire District Council shall pay to Mr C Bullen, 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.
10. The applicant is now invited to submit to East Hertfordshire District 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.

Andrew Boughton

INSPECTOR

² notwithstanding their obscured glazing