



Costs Decision

Site visit made on 20 February 2025

by R Lawrence BSc (Hons), PGDip (TP), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Costs application in relation to Appeal Ref: APP/A3655/D/24/3348052

The Old Orchard, Kettlewell Hill, Horsell, Woking, Surrey GU21 4JA

- 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 Roles for a full award of costs against Woking Borough Council.
- The appeal was against the refusal of planning permission for the extension and alteration of domestic outbuilding to form additional habitable accommodation.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicants allege that the Council has behaved unreasonably on substantive and procedural grounds. These include a failure to take into account material information, including relevant case law, leading to the proposal being considered as an independent self-contained dwelling. It is also contended that the harm in respect of character and appearance was over stated, and that the Council failed to work positive and proactively with the applicants.
4. The Council appear to have made little direct or detailed reference and assessment of relevant case law *Uttlesford DC v SSE & White [1992]*. The Council also fails to consider the description of development proposed, the proposed occupants or the potential fall-back of how the existing garage could be used without further planning permission, each of which are considerations material to the assessment of the application.
5. Furthermore, weight has been given weight to future potential changes that are not part of the submitted application such as the sub-division of the plot, and the burden that monitoring of compliance with potential planning conditions on the Council. As a consequence, the Council has come to the conclusion that an independent, self – contained dwelling would be formed, directly leading the second reason for refusal.
6. Whilst I cannot be certain whether the Council would have come to a different decision, had it fully considered all the information before it, there should have been a detailed analysis to support its findings. Overall, this constitutes unreasonable

behaviour. Consequently, this has resulted in unnecessary and wasted expense at appeal, with applicant required to submit evidence at appeal to rebut this matter.

7. I note the appeal decisions, submitted by the Council, where the Inspector found the proposed would constitute independent self-contained accommodation. I do not have the benefit of all the evidence before those Inspectors, as such, it is not possible to establish how comparable they are. Whilst a judgement needs to be made in each individual case, this should include a detailed analysis on all the relevant material considerations.
8. Turning to the effect on the SPA, I accept that the Council's reason for refusal was based upon their conclusion that the proposal would constitute independent self-contained accommodation. However, as will be seen from my decision, it cannot be assumed that additional ancillary accommodation would not result in a significant effect on the Thames Basin Heaths SPA. In this case, there is no substantive evidence to demonstrate that the proposal would not result in a likely significant effect, in the absence of mitigation. Consequently, I am content that the Council has not behaved unreasonably in adding this reason for refusal.
9. In relation to the first reason for refusal, the Council made a judgement based on the character and appearance of the area, including with reference to the Character Study and relevant development plan policies. It will be seen from my decision that, like the Council, I identified harm in relation to the effect of the proposed roof form on the character and appearance of the street scene. It follows that I am satisfied that the Council has shown it was able to substantiate its first reason for refusal.
10. I have noted the concerns of the applicants in relation to the Council's alleged failure to work positively and proactively during their consideration of the application. However, the award of costs cannot be claimed for the period during the determination of the application.
11. My attention has been drawn to the financial challenges that the Council are facing, with it being subject to a Section 114 (bankruptcy) notice. Whilst I do not doubt that this is impacting upon service provision, there is no specific evidence before me to indicate that the Council's financial position has directly led to the areas of unreasonable behaviour outlined above. As such, this has not altered my decision.

Conclusion

12. Drawing together the above matters, whilst I have found unreasonable behaviour, I have also concluded that the Council was able to substantiate its first and third reasons for refusal. As such, even if the unreasonable behaviour had not occurred, it is not the case that the development should have clearly been permitted, nor that the entirety of the appeal process could have been avoided.
13. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has only occurred in respect of whether the development would constitute a separate independent dwelling, and a partial award of costs is therefore warranted.

Costs Order

14. 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 and Mrs Roles, 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.

15. The applicants are 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.

R. Lawrence

INSPECTOR