



Costs Decision

Site visit made on 18 March 2025

by **I A Dyer BSc (Eng) FCIHT**

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Costs application in relation to Appeal Ref: APP/H2265/W/24/3350610

Ross Cottage, 114 Leigh Road, Hildenborough, Tonbridge, Kent TN11 9AG

- 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 and Mrs A Ravenscroft for a full award of costs against Tonbridge and Malling Borough Council.
 - The appeal was against the refusal of planning permission for conversion of existing annex to independent residential property.
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Decision

1. The application for an award of costs is partially 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 appellants are seeking an award of costs against the Local Planning Authority as they consider that the Council have acted unreasonably by introducing a new element to the reason for refusal when determining application, Council reference number 24/00920/PA, that was not included in the reasons for refusal for a previous application, Council reference 23/03126 (the initial application). Similarly, in the earlier application the Council referred specifically to overlooking from a balcony on the rear of 114 Leigh Road (No 114), and not from rear windows as referenced in the reason for refusal for the appeal before me. Thus, they do not consider that the Council has determined a similar case in a consistent manner.
4. The appellants also consider that the Council failed to give any weight to the existing use of the outbuilding as a music recording studio, and that the gravel driveway to the property already exists. Thus, they consider that the Council has failed to accurately assess the existing characteristics of the site, concluding that the Council did not conduct a site visit. They further assert that the Council has failed to substantiate the reasons for refusal regarding impact on the character and appearance of the site and the surrounding area and the effect on amenity of occupiers of No 114 relating to noise and disturbance.
5. In respect of the planning decision, overall, I have taken note of the Council's reasons for refusal. These are quite specific and relevant to the application, as my decision reflects. Whilst the wording of the reasons for refusal may differ between the two decision notices, I have found them sufficiently clear and precise in

identifying the issues to determine the appeal. In the Officer's Report the Council have also clearly set out the development plan policies with which they consider the proposal conflicts. These reasons, when considered with the officer report, have broadly been substantiated. The application formed a new planning application and the scheme that is the subject of this appeal, whilst similar to the initial application, was not identical.

6. The Council has confirmed that a site visit was conducted, with the agreement of the appellants, in association with the initial application, and that photographs taken at that time were used in the determination of the subsequent application, which is the subject of the current appeal. I do not consider this unreasonable as there was only a brief time interval between the two applications.
7. Whilst the terrace was identified in the initial application as being the vantage point of concern regarding overlooking, rather than any vantage points from windows, that was, in that application, the principle observation platform for looking towards the outbuilding. Whilst another vantage point, the door accessing the terrace, lay directly behind that, it was unnecessary to identify that as it was associated with the terrace and its use. The revised scheme removed that door, replacing it with a window. It was, therefore, reasonable to identify the new window as being a vantage point for looking towards the outbuilding.
8. Having regard to the matter of the obscure glazed window in a bedroom of the outbuilding, the appellants have provided no notification of intent to change the glazing on the plans, or elsewhere. They did, however, change the design and specifically identify changing upper front windows to obscure glazing. It is, therefore, reasonable to assume that the side windows would be unchanged.
9. This, however, would have also been the case on the initial application, which also did not indicate a change in glazing to the windows in question and a similar assumption in that case would indicate that the windows would remain obscure glazed and fixed closed. I find, therefore that the Council did not act consistently in this regard when determining the two applications.
10. The Council, in the Officers report, explains its concerns regarding independent access for a separate household through the side access and I am satisfied that it has provided sufficient evidence in that report to explain and justify its concerns.
11. Similarly, the Council has, in their Officer's Report, substantiated its concerns relating to the effect of the use of the building as a dwelling independent of No 114 and the subdivision of the plot. Whilst I did not agree with their reasoning, that does not mean that its concerns were unreasonable.
12. It is for the decision maker to determine what importance to allocate the matters that they consider material in determining planning applications and, from the reasoning set out in the Officer's Report, I find that the Council has done so to a satisfactory degree.
13. The appellants have identified that the Council has a policy of not accepting amendments to proposals during the determination of an application. They further raise concerns about contacting officers during the application process and the cost and administration of the Council's pre application advice service. These, however, are matters which lie outside of my remit in determining the appeal before me or

this application for costs and are matters for the appellants and the Council to resolve between them.

14. The appellants have brought my attention to an award of costs in relation to an appeal, PINS reference APP/A2280/W/3323335, where the Inspector awarded costs against the local planning authority on the basis that they had introduced new reasons for refusal which had not been previously specified.
15. However, in that decision the Inspector awarded costs because the local planning authority referred to a matter in its reason for refusal, the loss of historic fabric which it subsequently identified as an error and provided no evidence to substantiate. That is not the case here. The Council has substantiated all elements of its reasons for refusal.

Conclusion

16. I have found that the Council was inconsistent in its consideration of the matter of the obscure glazing of a bedroom window when considering the two separate applications, which amounts to unreasonable behaviour.
17. However, even had the Council acted with consistency when dealing with that matter, the appeal would not have been avoided and the appellants would still have incurred the cost of appeal. Given that I have found, in my appeal decision, that the issue would result in material harm to the living conditions of future occupiers, the logical conclusion is that a consistent approach by the council would have nonetheless resulted in refusal of planning permission.
18. However, in failing to identify this matter in their refusal of the initial application, the appellants lost the opportunity to address it in their later application and incurred costs in regard to the preparation of evidence on that matter in the appeal before me. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the matter of the obscure glazing of the bedroom window, is justified.

Costs Order

19. 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 Tonbridge and Malling Borough Council shall pay to Mr and Mrs A Ravenscroft the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting those parts of the Council's second reason for refusal which concerned alleged issues of adverse effect on the living conditions of future occupiers from lack of outlook in conflict with Policy CP 24 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (2007).
20. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

I A Dyer

INSPECTOR