
Costs Decision

Site visit made on 24 November 2015

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 December 2015

Costs application in relation to Appeal Ref: APP/T1410/W/15/3133001 The Drive, 153 Victoria Drive, Eastbourne, East Sussex BN20 8NH

- 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 Julian Konti (@Architect) for a full award of costs against Eastbourne Borough Council.
 - The appeal was made against the refusal of planning permission for the conversion of first floor accommodation to form 1 one-bedroom flat and 2 two-bedroom flats with access from the rear.
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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 (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. The applicant has applied for a full award of costs on the basis of the Council's unreasonable behaviour in not producing evidence to substantiate the reason for refusal. The Council considers that it was entitled to give weight to the effect of noise from roof top plant associated with the ground floor food store on the living conditions of future occupiers. It also sought to negotiate an alternative to the noise mitigation solution proposed by the applicant.
 3. Whilst, as in this case, the Council is not bound to follow the recommendation of its officers, the PPG advises that local planning authorities are at risk of an award of costs if they fail to substantiate each reason for refusal or rely on vague or generalised assertions about the impact of a proposal which are not supported by objective analysis (Reference ID: 16-049-20140306). In this case the appellant produced a noise impact assessment which addressed the issue in the only reason for refusal and recommended mitigation measures. Further information was submitted in response to the Council's outstanding concerns. There is nothing in the Council's evidence to dispute the findings of those submissions.
 4. The Council remained concerned that noise from the roof top plant would restrict future occupiers from opening their windows at night and, therefore, have an adverse effect on their living conditions. Whilst this consideration had the potential to be determinative, no objective analysis has been produced to demonstrate that the proposal would have the claimed effect. That being the
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case, it was not incumbent on the applicant to pursue the alternative noise mitigation solution suggested by the Council. The fact that it did not do so does not, therefore, diminish the validity of the cost claim.

5. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

6. 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 Eastbourne Borough Council shall pay to Mr Julian Konti (@Architect) the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
7. The applicant is now invited to submit to Eastbourne 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.

Simon Warder

INSPECTOR