
Costs Decision

Site visit made on 30 November 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 14th December 2016

Costs application in relation to Appeal Ref: APP/P3040/D/16/3158135 44 Cooper Close, Cropwell Bishop, Nottinghamshire NG12 3DL

- 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 G Partridge & Miss L Hortor for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for proposed first floor extension above existing garage to form bedroom and bathroom including internal alterations.
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Decision

1. The application for an award of costs is refused.

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.
 3. In this case, the applicant has suggested that the Council prevented development which should clearly have been permitted, having regard to the development plan, national policy and other material considerations. They also suggest that the Council relied on vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
 4. The applicant's main area of concern is that an earlier application for a largely identical extension was refused for the same reasons of impact on light and outlook to a neighbour's bedroom window. However, in the officer report on the previous scheme, there was reference to a suggestion made to the applicants to paint the extension white to increase the amount of reflected light into the affected room. It is noted in this report that the applicants declined to act on this suggestion at the time.
 5. However, within the proposal before me, the wall would be painted white. This did not, however, lead to a change in the decision. The officer report on this occasion noted that the painting of the wall would not overcome the 'tunnelling' effect on the bedroom and the resulting overbearing impact. I agree with this conclusion.
 6. The implication in the officer report is that the issue relating to light would be resolved by painting the wall white. This would be a logical inference from the fact that there is no mention of painting the wall *not* addressing their concerns
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- over light. It is unfortunate, therefore, that the reason for refusal continued to refer to the impact on light. If this was not the intention of the Council, then I can only conclude that the officer report was insufficiently clear or detailed to provide a sufficient explanation of their continuing concerns.
7. The Council also did not provide any further evidence to support their case with the appeal. Therefore, the continuing reference to light in the reason for refusal, combined with a lack of clarity over their concerns, is evidence of unreasonable behaviour in terms of not substantiating a reason for refusal.
 8. However, the officer report is clear that the 'tunnelling' effect was still a concern of the Council and that the painting of the wall would not address this issue. Again, while the evidence is not detailed in this regard, I am satisfied that sufficient information was provided for me to be clear as to the nature of the concern and to give the issue proper consideration. I see nothing untoward in concluding that painting the wall would not address matters of outlook or that there should have been any assumption that this would be the case.
 9. I do not accept that the Council has unreasonably delayed development that should have been clearly permitted, having regard to the development plan, national policy and other material considerations. The issue of outlook in particular is a matter of planning judgement. The Council was entitled to come to a different conclusion to the applicants when assessing the merits of the application. Therefore, I see no evidence of unreasonable behaviour in relation to the effect on outlook and the overbearing impact of the extension.
 10. For there to be an award of costs, there must also be evidence of unnecessary wasted expenditure. It was clear that light was not the only matter of concern for the Council and that the painting of the wall was not seen as appropriate mitigation for the issue of outlook. The decision to progress to appeal was taken in full knowledge that this was not the only issue to address. Therefore, whatever the previous expectations had been in relation to the mitigation, the decision to submit an appeal, and the costs associated with it, was not entirely the result of any unreasonable behaviour of the Council.
 11. I accept that the applicants' did have to provide additional evidence within their appeal statement to address the issue of light. However, this amounted to only a small part of the overall statement and included evidence ostensibly already submitted as part of the application. This would not have involved significant extra work and thus I do not accept there has been any waste of expenditure as a result of the Council's behaviour.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Lee

INSPECTOR