
Costs Decision

Site visit made on 6 February 2017

by **Rory Cridland LLB (Hons), Solicitor**

Decision date: 3 March 2017

Costs application in relation to Appeal Ref: APP/G3110/W/16/3160598 10 Coleridge Close, Oxford OX4 3JG

- 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 Tariq Khuja, Asset Max Ltd for a partial award of costs against Oxford City Council.
 - The appeal was against the refusal of planning permission for the construction of an extension to number 10 Coleridge Close, to increase the accommodation to 3 no one bedroom flats.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it indicates that Local Planning Authorities will be at risk of an award of costs being made against them if they, amongst other things, prolong the proceedings by introducing a new reason for refusal or introduce fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
 3. The application is made on the basis that the Council has acted unreasonably by introducing a new reason for refusal and by failing to produce evidence to substantiate each reason for refusal. Furthermore, the applicant claims that by introducing fresh and substantial evidence at a late stage, the Council has necessitated extra expense for preparatory work which would not otherwise have arisen.
 4. A single reason for refusal was given in the Decision Notice (DN), that being that the proposal would provide insufficient outdoor amenity space for flat 3. This refusal reason is numbered 2. However, following the lodging of the appeal, the Council sought to introduce an additional reason for refusal which it claimed had been omitted from the DN in error.
 5. While I acknowledge that in some circumstances the introduction of an additional reason for refusal would, in itself, constitute unreasonable behaviour, particularly when introduced at a late stage in the appeal process, unreasonableness must be assessed on a case by case basis. In this instance, the officer report specifically addressed the matter of internal floor space and
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concluded that it was contrary to LP Policy H12. The Council has also provided correspondence to show that this matter was raised with, and accepted by, the appellant, just before the decision notice was issued. Furthermore, in drawing attention to the matter early on, the Council clearly sought to mitigate the impact and give the appellant a reasonable opportunity to address this matter as part of the appeal. This helped ensure that proceedings were not prolonged as a result. On balance, I do not consider the Council to have acted unreasonably in the circumstances.

6. Furthermore, other than to challenge the right of the Council to introduce this additional reason, it appears to me that the appellant has made very little attempt to address the Council's concerns in this respect. No counter arguments have been provided and no evidence submitted which would indicate that a departure from Policy HP12 would be justified in this instance. On balance, from the information before me, it appears that any additional work which has resulted from the introduction of this additional reason for refusal is minimal.
7. Turning then to whether the reasons for refusal have been substantiated, the Council's statement is clear that its case is set out in the officer report, a copy of which was provided as part of the appeal papers. The details of their concerns were cogently set out in that document and, as such, I do not accept that the LPA's case was made solely on the basis of a new reason for refusal. Accordingly, I do not consider the council to have acted unreasonably in this respect.
8. Consequently, while I recognise that the introduction of additional reasons for refusal should be discouraged, in the present circumstances I do not consider the Council's behaviour to be unreasonable.

Conclusion

9. For the reasons set out above, I do not consider an award of costs to be justified.

Rory Cridland

INSPECTOR