

Costs Decision

Site visit made on 8 March 2017

by D J Barnes MBA BSc (Hons) DipTP MRTPI

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

Decision date: 17 March 2017

Costs application in relation to Appeal Ref: APP/G3110/D/17/3167834 Land at 26 Silver Road, Oxford OX4 3AP

- 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 Dominic Woodfield for a full award of costs against Oxford City Council.
 - The appeal was made against the refusal of planning permission for the erection of a single storey rear extension
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Decision

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

Reasons

2. The National Planning Practice Guidance 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 appellant has submitted a cost claim but the Council has not responded to the claim.
 3. The main grounds upon which the claim is based are associated with the failure of the Council to adequately consider both the potential fall-back position and the detailed daylight assessment which was submitted as an alternative to applying the 45° guideline. The Planning Officer's report and the reason for refusal do refer to the fall-back position as being less harmful when compared to the effects of the proposed development. However, such a generalised concern does not explain why the proposed development would be materially more harmful than the fall-back scheme in respect of the loss of light and, to a lesser extent, outlook, albeit this latter concern was not included in the reason for refusal.
 4. Reliance is placed by the Council on the appeal scheme breaching a 45° line drawn from the centre of the habitable room window within the rear elevation of 25 Silver Road. However, as stated in the development plan, this is only a guideline applying to normal circumstances and it is recognised in Policy HP14 of the Sites and Housing Plan that it should be considered alongside other material factors. One such material factor could be a detailed daylight assessment based upon the criteria and thresholds contained in BRE 209 *Site layout planning for daylight and sunlight – A guide to good practice*.
 5. Based upon the Planning Officer's report there is no clear reference or
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consideration by the Council of the detailed assessment on the effect of the proposed development on the level of daylight reaching the rear window of No. 25 submitted by the appellant in support of the application. Although there is reference to a significant loss of light to the habitable room window, this claim is not substantiated by specific evidence to contradict the appellant's detailed assessment which was undertaken by a specialist consultant. An award of costs is justified against the Council because there was a failure at the application stage to properly consider the detailed daylight assessment with, instead, reliance placed upon generalised concerns rather than producing cogent and substantive evidence to support the reason for refusal.

6. Further, there is no specific evidence to substantiate that an increase by 1.4 metres in the length of the proposed extension when compared to the fall-back position would exacerbate the situation and be materially more harmful to levels of light reaching the window. It is acknowledged that the appellant's additional daylight assessment to assist with such considerations was unavailable to the Council at the time the application was determined. However, the Council's assessment was a generalised concern rather than based upon any specific evidence.
7. The appellant's other grounds for the costs claim are associated with how the Council handled the application and the delay in its determination. Part of the delay was directly applicable to the change in circumstance of the occupier of No. 25 and the need to amend the scheme which was not the fault of the Council. However, for the period post the submission of the amended scheme with the detailed daylight assessment and, more particularly, the confirmation that prior approval was not needed for the fall-back scheme, it is unclear why there was a delay in the determination of the revised application. This delay adds further weight to the award of costs against the Council, especially in the absence of a response to the appellant's application for an award of costs to explain the delay.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Oxford City Council shall pay to Mr Dominic Woodfield, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Oxford City 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.

D J Barnes

INSPECTOR