
Costs Decision

Site visit made on 18 April 2017

by Graham Wyatt BA (Hons) MRTPI

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

Decision date: 19th May 2017

Costs application in relation to Appeal Ref: APP/W2465/D/17/3170399 71 – 73 Kerrysdale Avenue, Leicester LE4 7GN

- 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 Mayur Pau for an award of costs against Leicester City Council.
 - The appeal was against the refusal of planning permission for a single storey extension at rear of houses and single storey detached building in rear gardens.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the PPG is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.
5. The appellant's application for costs states that the Council has acted unreasonably as it failed to correctly define what constitutes private amenity space and maintains that the open space created under the single storey extension is available as private amenity space. Moreover, the development does not amount to excessive coverage of the site.
6. Whether a development is excessive or not is matter of judgement that the Council is able to conclude on. However, in reaching that judgement the Council have failed to take into account their own definition of private amenity space as set out within the Leicester City Council Supplementary Planning Document (SPD) on Residential Amenity (adopted February 2008) which states categorically, "In simple terms, private amenity space is often considered as space that is outside or partly outside, where one can relax." The area

between the outbuilding and the rear extension can therefore be considered as private amenity space.

7. The PPG states at paragraph: 049 Reference ID: 16-049-20140306 that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, the failure to produce evidence to substantiate each reason for refusal on appeal.
8. I have shown that the development provides in excess of the private amenity space required by the SPD. I therefore consider that the Council has acted unreasonably by failing to substantiate how the development does not provide adequate amenity space causing the appellant to incur unnecessary expense in the appeal process. An award of costs on this particular matter is allowed.
9. With regard to the impact on the living conditions of the 69 Kerrysdale Avenue, while I have found that the living the conditions would not be compromised, I do not find the Council has acted unreasonably on this matter. The Council's assessment on this particular issue is based upon the details provided by the appellant as part of the application submission. The appellant provided a further drawing (PL 71-43 A100 Rev C), as part of his appeal submission which clarified the 45 degree line.
10. Turning to the final reason for refusal, paragraph 049 Reference ID: 16-049-20140306 of the PPG which states that the local planning authority are at risk of an award of costs if vague, generalised or inaccurate assertions about a proposal's impact are made, which are unsupported by any objective analysis.
11. The Council's assertion is that the outbuildings are highly likely to be used as a separate unit of living accommodation. While the appeal before me is for a detached outbuilding ancillary to the main dwelling, I note the concerns the Council raise regarding the internal fixtures and fittings of the outbuildings. I therefore consider that the Council has not acted unreasonably by asserting their concern that a different use may occur at a later date as a result of the internal appearance of the outbuildings.

Costs Order

12. 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 Leicester City Council shall pay to Mr Mayur Pau, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing reason for refusal 1; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Leicester 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.

Graham Wyatt

INSPECTOR