
Costs Decision

Site visit made on 6 June 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 4th July 2017

Costs application in relation to Appeal Ref: APP/J0350/W/17/3171402 1-2 The Drive, Slough SL3 7DB.

- 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. R. Khan for a full award of costs against Slough Borough Council.
 - The appeal was against the refusal of planning permission for erection of two rear dormer roof extensions and associated roof alterations to facilitate the creation of one (1x) one-bedroom flat in the roof space.
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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 where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The PPG also advises 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. Examples of this include: a failure to produce evidence to substantiate each reason for refusal on appeal, the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, not determining similar cases in a consistent manner and refusing planning permission on a planning ground capable of being dealt with by conditions.
 4. As is evident from my appeal decision, I have found the Council's stance in relation to the appeal scheme to be troubling given the existing use of the appeal property and the proximity of other flatted developments in the locality. Whilst I accept that the effect of a development on the character of an area is often a matter of judgement, in this case there has been a clear and abject failure on the part of the Council to support its reason for refusal. Beyond generalised comments and reference to an out of date appeal decision from another borough, the Council's submissions are bereft of objective appraisal and substantial evidence.
 5. It is common practice for sound proofing to be installed in flatted development to safeguard living conditions of neighbouring occupiers. There appears to have been no consideration given by the Council at the application or appeal stages as to whether its concerns in this regard could have been addressed by
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way of a planning condition. Given that I found these matters could be dealt by condition, it follows that the Council refused planning permission on a ground which was capable of being dealt with by condition.

6. Notwithstanding that the appellant failed to submit the first floor plan at the application stage this was merely an oversight and could have been easily remedied by a simple phone call or e-mail to request the missing plan. The wording of the third reason for refusal suggests to me that the Council were aware that these concerns could have been easily resolved by way of condition or the submission of a plan.

Conclusion

7. Overall, the reasons for refusal patently failed to stand up to scrutiny on appeal. In particular, the failure to produce the evidence necessary to substantiate each reason for refusal means that the Council's decision was injudicious and relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence. There was also a failure to consider whether reasons for refusal 2 and 3 were capable of being dealt with by condition.
8. I therefore find that unreasonable behaviour 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

9. 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 Slough Borough Council shall pay Mr G. R. Khan, the costs of the appeal proceedings described in the heading of this decision.
10. The PPG makes it clear that the award of costs cannot extend to compensation for indirect losses or those that are unrelated to the appeal itself. With that in mind, the applicant is now invited to submit to the Slough 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.

D. M. Young

Inspector