
Costs Decision

Site visit made on 20 June 2017

by S J Buckingham BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 6th July 2017

**Costs application in relation to Appeal A Ref: APP/D1590/W/17/3171959
and Appeal B Ref: APP/D1590/W/17/3171969
40 Westbury Road, Southend-on-Sea, SS2 4DP**

- 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 Dr Saqib Mahmud for a full award of costs against Southend-on-sea Borough Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for erection of a conservatory to the rear.
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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 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. The applicant's grounds for claiming costs in relation to both appeals are both procedural and substantive.
4. In terms of the procedural grounds, while I have noted the appellant's comments regarding a previous enforcement action, it has no bearing on this application, which relates only to costs arising directly from the current appeals.
5. Turning to substantive matters, it is not clear from the evidence put before me whether the inaccurate description of the conservatory in relation to the Appeal A application played a part in the Members' decision to refuse the application. It appears to me that this was not made clear to the applicant either, thereby leading to his decision to make a second application in the hope that a more accurate representation of the case would lead to an approval. However, notwithstanding the officer's inaccurate description of the conservatory, the first and second applications were recommended for approval, suggesting that the applicant was not significantly prejudiced by this error.
6. The reason for refusal given by the Council in relation to both appeal cases cites the effects of the existing conservatory on the character and appearance of the area. Although in its appeal statement the Council mentions the small increase in size over the approved conservatory, no analysis is given of its effects.

7. Poor detailing of the design due to its failure to reflect the architecture of the existing buildings is referred to as another factor, which I find surprising, as most modern conservatories installed on buildings of broadly traditional design would be likely to fail in this respect. Furthermore I did not note on site any particular existing features which the proposal might have been expected to reference in its design, nor were any pointed out by the Council in its statement.
8. The reason for refusal therefore appears to me to be a vague and generalised assertion about the proposal's impact, which is unsupported by any objective analysis.
9. According to the evidence before me, the fact that the conservatory was not constructed in accordance with the approved plans was also mentioned by a member of the Development Control Committee in the context of Appeal B, but this would not necessarily lead to harm, and there has been no convincing attempt to demonstrate that it has in fact done so.
10. I therefore find that unreasonable behaviour as described in the Planning Practice Guidance has been demonstrated in relation to both appeals, and that in preparing and submitting two appeals, the applicant has been put to unnecessary and wasted expense. As a result, a full award of costs is justified.

Costs Order

11. 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 Southend-on-Sea Borough Council shall pay to Dr Saqib Mahmud, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Southend-on-Sea 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.

S J Buckingham

INSPECTOR