
Costs Decision

Site visit made on 17 July 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 28th July 2017

Costs application in relation to Appeal Ref: APP/P3040/W/17/3172365 70 Wilford Road, Ruddington, NG11 6EY

- 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 Mascari Design Solutions Ltd for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing buildings and the erection of two detached dwellings and associated landscape.
-

Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and 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 application for an award of costs is made on two grounds. Firstly the appellants claim that the Council's decision was based on inaccurate assertions about the amount of amenity space that would be provided for each of the dwellings. They consider that as a result the application was not properly assessed, and if it had been the decision could have been different, and the appeal avoided. Secondly, it is argued that the Council have failed to substantiate the second reason for refusal relating to highway safety, and that the Council have not determined this application in a consistent manner to the subsequent application on the site¹.
4. With regard to the matter of outdoor space, in determining the application the Council have differentiated between the total outdoor space and what they consider would be usable garden space. To this end the Officer's report only identifies what they considered would be the useable garden space that would be provided for each dwelling, although, I accept that the Officer's report could perhaps have highlighted more clearly why it considered not all of the outdoor space was considered useable space as was done on the later application.
5. The appellant has suggested that these figures are considerably lower than those given in the Council's appeal statement. However, I consider that

¹ Application Reference 16/03097/FUL

paragraphs 5.5 and 5.6 of the Council's appeal statement clearly identifies that in the Officer's report the figures relate to the lawned area shown on the layout plan, but then provides a figure for the total amenity space utilising a similar methodology to the appellant. The paragraphs highlight that these figures include the roof terraces for the dwelling on plot 1 and the area under the overhang for the dwelling on plot 2, and sets out why the Council does not consider that it is appropriate to include such areas in the calculations. The paragraph also highlights that even if the appellant's approach to calculating the outdoor space is adopted then the useable outdoor space falls below the guidelines.

6. As such this does not indicate that the Council has altered its views on the amount of useable garden space that would be available to the properties, or that the original decision was based on inaccurate assertions. Whilst the appellant may not agree with the Council's reasoning or conclusion as to what constitutes usable outdoor space, it does not mean that the Council have acted unreasonably.
7. With regard to the second reason for refusal relating to highway safety, in both this, and the subsequent application, the smaller dwelling proposed at the rear of the site would be provided with one off-road parking space. However, whilst in this case it has been concluded that this would give rise to highway safety issues through the potential for greater demand for on-street parking, this is not the case for the later application. In both applications the house on plot 2 would be a 2-bed dwelling, and there is no evidence that indicates there were any other material changes in circumstances in the time between the determination of the two applications.
8. I appreciate that when determining the application the Council were acting on advice from their technical consultee on highway matters. Nevertheless, as the second application was determined before the linked appeals were lodged, the Council could have indicated that in light of the later application they would no longer pursue this reason for refusal.
9. Consequently, the Council have not determined these similar cases in a consistent manner, and they have acted unreasonably in pursuing this second reason for refusal. As a result, the appellant has incurred unnecessary cost in having to address this reason for refusal in the appeal process.
10. Therefore I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and thus a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rushcliffe Borough Council shall pay to Mascari Design Solutions Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing highway safety matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Rushcliffe 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.

Alison Partington

INSPECTOR