
Costs Decision

Site visit made on 27 November 2019

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2019

Costs application in relation to Appeal Ref: APP/J1535/D/19/3235132 158 Honey Lane, Waltham Abbey, Essex EN9 3BE

- 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 M Power for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for a single storey side extension at 1st floor level.
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Decision

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

Preliminary Matter

2. On 1 November 2019, the Council were advised of the costs application and given the opportunity to make comments. No response was received. I have therefore based this decision on the principles set out in the national Planning Practice Guidance (the PPG).

Reasons

3. The PPG advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
4. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include making 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 persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
5. The essence of the application for costs is that the Council failed to have due regard to a previous appeal decision on the site from April 2019¹. The Inspector in this appeal considered the effect of the development on the character and appearance of the area at paragraphs 6 and 7 of the decision. The overall conclusion at paragraph 7 was unequivocally that the extension would complement the existing dwelling and the local street scene, and that the development would comply with Policies DBE10 of the Epping Forest Local Plan

¹ Appeal ref APP/J1535/D/19/3223852

1998/2006 (LP) and Policy DM9 of the emerging District Local Plan Submission Version 2017 (DLP).

6. The development previously considered included the creation of a roof terrace above the existing ground floor rear extension. While this does not form part of the current proposals, I am satisfied that the development is substantially the same as that considered by the Inspector in the earlier appeal, and has an equivalent effect on the character and appearance of the area. Nevertheless, the Council found the current proposal to be contrary to the above policies of the LP and emerging DLP. The earlier appeal is acknowledged within the planning history section of the Council's report on the application, but there is no further mention or discussion of the appeal and no evidence is put forward to justify this conclusion in direct conflict to the findings of the previous appeal.
7. Less than 3 months elapsed between the April 2019 appeal decision and the Council's decision on the current scheme. The Council have not pointed to any change in relevant policy or offered new information which would warrant a different conclusion on this matter, and there have been no material changes to the appeal site or its surroundings. There are thus no new material circumstances that might lead to a different conclusion as to the effect of the development on the character or appearance of the appeal site or area.
8. In failing to have appropriate regard to the conclusions of the previous Inspector's decision, the Council has not applied the principles of consistency in decision-making and has persisted in objections to an element of a scheme which an Inspector has previously indicated to be acceptable, contrary to the guidance of the PPG.
9. The Council also determined that the current proposal would be overbearing to occupiers of 160 Honey Lane. While the previous appeal decision considered the effect of development on the living conditions of neighbours, it is apparent that the main focus of this main issue was the potential for overlooking or loss of privacy arising from the then proposed rear roof terrace. There is a brief comment suggesting that loss of light would not materially affect occupiers of 160 Honey Lane, but whether or not the development would be overbearing to neighbouring occupiers was not explicitly considered within the decision, indicating that this was not a point of significant contention.
10. No rationale is provided to indicate why the Council took a different view to that at the time of the previous proposal. Moreover, rather than any form of objective analysis, explanation of the alleged harm comprises only a generalised assertion that due to the lack of a 1m set in from the boundary, the extension would be visually overbearing to this neighbour.
11. For the reasons set out, I conclude that the Council has acted unreasonably. Had the Council acted in a manner consistent with the previous appeal decision, the appeal could have been avoided. As a result, the applicant incurred costs in the making of the appeal.
12. 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

13. 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 Epping Forest District Council shall pay to Mr M Power, 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.
14. The applicant is now invited to submit to Epping Forest District 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.

J Bowyer

INSPECTOR