



Costs Decision

Site visit made on 26 November 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Costs application in relation to Appeal Ref: APP/M1005/D/19/3236487 12 Holloway Road, Duffield DE56 4FE

- 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 Robert Fowkes for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of planning permission for rear extension for new garden room. Re-roof existing rear flat roof area and move rear building line out to increase back bedroom sizes.
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Decision

1. The application for an award of costs is refused.

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 sets out the type of behaviour that may give rise to a substantive award against a local planning authority (LPA) and includes situations where an LPA has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Other types of behaviour that may result in costs being awarded include where there has been a lack of co-operation between the local planning authority and the other party.
4. The appellant is aggrieved that one of the reasons for refusal, which related to the level of outlook from the proposed fourth bedroom, had not been previously raised by the Council. Whilst I have found that the living conditions for occupants of the host dwelling would be acceptable, particularly when compared with the existing situation, this matter has not ultimately been decisive. Similarly, had this matter been raised by the Council and the appellant been given an opportunity to respond, it is unlikely that this would have overcome the Council's other concerns.
5. Concern is also raised by the appellant that the Council's Officer visited the neighbouring property at No 14 Holloway Road. Whether or not this followed a request by the neighbour is immaterial. It would not be an unusual occurrence for a decision maker to seek access to or be invited on to neighbouring land during consideration of a proposal. Equally, the Council's officer may have been satisfied they were able to assess the effect of the proposal on the living

conditions of the neighbouring occupants at No 10 Holloway Road without accessing neighbouring land, just as I was in making my own assessment.

6. Having noted a reference in the Council's delegated report, which refers to concerns relating to the impact on No 14 Holloway Road, I have considered the relationship with this neighbouring property for the purposes of my assessment. However, the Council's decision notice does not refer to No 14, and the delegated report confirms the development complies with the 45-degree angle referred to in the Amber Valley Borough Council Supplementary Planning Document – Residential Development (2007). In any case, compliance with this angle is not the only relevant factor in considering the effect of a proposal on neighbouring living conditions. Site-specific factors and the overall massing and positioning of a proposal relative to a neighbouring dwelling must also be considered. Whilst I have not reached the same view as the Council on some of the main issues in my decision, I am satisfied that the Council was entitled to reach the conclusions it did based on an assessment against the policies of its development plan.
7. Finally, there is no substantive evidence before me to suggest that the Council's decision to refuse the planning application was the result of a lack of experience of the Council's case officer. Even if internal discussions took place with senior colleagues before the Council made their decision, this would be entirely normal practice. Given the Council's fundamental design concerns, I am not persuaded by the evidence before me that further engagement between the appellant and the Council's officers would have resulted in a more favourable decision.
8. I therefore conclude that it is likely that the Council would have refused the planning application even without the second reason for refusal and whether or not a visit to neighbouring land was undertaken. Consequently, I find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

M Russell

INSPECTOR