
Costs Decision

Site visit made on 15 January 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Costs application in relation to Appeal Ref: APP/J1535/W/19/3239214 11 Kendal Avenue, Epping CM16 4PW

- 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 Martin Shipp for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for a new detached 4-bedroomed house to the rear of the site, including a raised driveway and a detached garage.
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Decision

1. The application for an award of costs is allowed in part 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. With regard to the first reason for refusal, the applicant has contended that the scheme clearly accorded with national policy. However, in my view that is a matter of planning judgement, and whilst I found the driveway to be acceptable, I acknowledge that the means of construction is not one commonly found in residential areas. To my mind the Council adequately substantiated its concerns in its statement, and therefore, whilst I disagreed with the judgement at which it arrived, I nonetheless find it did not act unreasonably in coming to that judgement.
4. Turning to the second reason for refusal though the Council's Statement, which is the only place where this harm is discussed, does little more than explain the context and re-state the reason for refusal. It again says the concern arises from the levels, and from the design, scale, bulk, siting and proximity of the proposal. However, it does not explain how, given the relationship there would be between the 2 houses, these matters would cause harm for the residents of Whitebeams or identify the elements of the proposal that would lead to this harm. I am therefore unclear as to the basis for this concern. Moreover, the Council has not explained why it considered this proposal resulted in harm to the neighbour's living conditions but it did not raise the same concern against the similar scheme dismissed recently.

5. Therefore, in relation to this matter I find it has acted unreasonably in that it did not consider like cases in a like manner and it has relied on vague and generalised assertions unsupported by objective analysis. Therefore, having regard to guidance in the *Planning Practice Guidance*, the Council's actions in relation to this second reason for refusal were unreasonable, and the appellant has had to incur unnecessary expense in defending his position in the appeal process

Conclusions

6. Accordingly, I conclude that unreasonable actions resulting in unnecessary expense have not been demonstrated in relation to the Council's approach to the first reason for refusal.
7. However, I conclude that unreasonable actions resulting in unnecessary expense have been demonstrated in relation to the Council's approach to the second reason for refusal. I therefore award costs in relation to this element only.

Costs Order

8. 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 Martin Shipp the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the concerns about the effect on the living conditions of neighbouring residents. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. Mr Martin Shipp 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.

Jeremy Sargent

INSPECTOR