
Costs Decision

Site visit made on 21 January 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Costs application in relation to Appeal Ref: APP/D1590/D/19/3240026 32 Percy Road, Leigh-on-Sea, SS9 2LA

- 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 Sevan Alticosalian for a partial or full award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of planning permission for first floor extension at the rear.
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Decision

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

Reasons

2. Planning Practice Guidance ("PPG") advises that parties in planning appeals and other planning proceedings normally meet their own expenses. However, 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. In this case the applicant argues that the Council acted unreasonably in its approach to the substantive planning issues raised in both reasons for refusal.
4. In terms of the first reason for refusal, paragraph 7.6 of the officer report sets out a number of concerns about the size of the extension relative to the host dwelling. It is argued that it would be poorly integrated with the roof of the host building and is too close to the retained central dormer. Concern is also expressed about the overall scale of the extension in relation to the rear garden scene. It argues that the proposal therefore fails the test of good design, identified as a planning policy requirement.
5. In taking this approach the Council clearly had regard to the appearance of the existing building on the site. It was reasonable for the Council to use the terms 'contrived' and 'lacking sufficient subservience' to explain its position without providing a detailed analysis of why it thought this to be the case. Nor was it essential for the Council to undertake an analysis of historic building forms to substantiate its position that the proposal would not amount to good design.
6. It is also suggested that the Council failed to appreciate the distinction between size and scale. Notwithstanding this, in simple terms it is clear that the Council thought the extension would be too big. Whether or not this is actually the case is a matter of planning judgement.

7. It is further argued that the Council failed to have regard to the fact that the extension would be located at the back of the property, so away from public views from the road. However, it did establish that the proposal would have an effect on the rear garden scene of the wider surrounding area, therefore indicating that the extension would be visible from other neighbouring residential properties. As such, it did identify who the receptors of the alleged harm would be, in a reasonably precise way. This is reflected in its conclusion that the proposal would harm the locality.
8. The Council did not suggest that the proposal was in a Conservation Area or the setting of a listed building, nor did it otherwise suggest that it should be regarded as a heritage asset. As such, the suggestion that it applied policy tests that would normally only apply in these areas is not supported by the available evidence.
9. Planning decisions must be made in accordance with the development plan, unless material considerations indicate otherwise¹. In this case the position that good design is required was reflected in the planning policies quoted in the officer report and cited on its decision notice. The applicant argues that, in the circumstances of this case the true test should be to demonstrate harm. However, in considering the proposal against the development plan, the Council applied the correct statutory test. It acted reasonably in relation to the substantive planning issues associated with its first reason for refusal.
10. Considering the second reason for refusal, this relates to privacy. The Council refer to 'perceived' and 'actual' loss of privacy in the decision notice. The statement that there would be a perceived loss of privacy is readily comprehensible. This issue often arises in planning decisions and is clearly capable of being a material planning consideration. It means that someone may experience a sense of being overlooked, irrespective of whether or not such overlooking would as a matter of fact occur. In this case the proposal would be sited close to other properties from where the works would be visible. The Council did not therefore act unreasonably in considering this issue.
11. The alleged actual overlooking would occur through the positioning of a window at first floor level. The officer report explains that this would be due to the reduced separation with the properties along Westleigh Avenue, specifically 43 and 43A, at this level.
12. The fact that there is a recently constructed existing building at No.34 in a similar position to the extension is clearly relevant. However, this was discussed in the officer report. Whilst this neighbouring building had been found to be acceptable through a succession of planning and appeal decisions, it was suggested that the separation distance proposed on this site would be less², indicating that the developments are not comparable.
13. Considering the situation on site, it was evident that the relationships are not absolutely identical. The site plan supports the view that Nos 43 and 43A Westleigh Avenue are very slightly closer to Percy Road than Nos 39 and 41. As such, the Council's stance on this issue was not unreasonable. Whilst it will be clear from the planning appeal decision that I do not regard these differences as being significant, this is also a matter of planning judgement.

¹ Section 38 (6) Planning and Compulsory Purchase Act 2004

² Paragraph 7.16 of the officer report.

14. Whilst the Council did not identify any specific space standard in support of its reasons for refusal, it did identify policies which seek to protect residential amenity and cited these in support of its second reason for refusal. It justified its position, in this respect.
15. In all other respects, the officer report explains the Council's position clearly. Its reasons for objecting to the proposal are readily comprehensible to any interested party. It is not muddled or confused, and has appropriate regard to adopted planning policies, in line with its statutory role as a planning authority. The fact that there were no objections is of no relevance to this decision.
16. In conclusion, I cannot agree that the Council has acted unreasonably in this case. The Applicant was not put to unnecessary or wasted expense in pursuing the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. For the reasons set out above and having had regard to all other matters raised, neither a partial nor full award of costs is justified.

Neil Holdsworth

INSPECTOR