
Costs Decision

Site visit made on 9 June 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2020

Costs application in relation to Appeal Ref: APP/Q3060/D/20/3247107 35 St Leonards Drive, Nottingham NG8 2BB

- 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 & Mrs Green for a full award of costs against City of Nottingham Council.
 - The appeal was against the refusal of planning permission for a development originally described as a "proposed two storey side extension and single storey rear extension."
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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 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. The grounds for the application are based on the view that the Council has acted unreasonably in refusing planning permission with regard to the provisions of the PPG that concern preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The application centres on the applicant's view that the Council has failed to substantiate how the proposal would lead to an overbearing impact.
4. The Planning Officer Report (the Report) sets out how the proposal would cause the purported effects to the living conditions of the occupiers of 33 St Leonards Drive (No 33) in a number of different respects. It refers, in particular to the size of the extension, its proximity to the boundary and the effect on a side elevation window. Accordingly, it sets out what is meant by an overbearing impact, how it would come about and what part of No 33 it considers would be affected.
5. Where the Report makes reference to the appearance of the window, this seems simply for the purposes of description. It is not unreasonable for this to be included as it assists the reader in understanding the context within which the Council's concerns are to be understood. The Council also clearly see the effect on light to the window as being part of an overbearing impact. Whilst I

- would agree these are aspects of the effects on living conditions that are generally dealt with separately, it is not unreasonable for the Council to take a different stance because of its concerns over the size and proximity of the proposal to the window.
6. The Report also details the differences between the proposal and the previously approved scheme¹. It makes the point that the eaves height would be greater, albeit marginally, which it finds would impact on this window. It also states that the proposal would wrap around to the rear, which it believes would increase the massing of the building along the shared boundary compared to the approved scheme by increasing the projection and the area of the roof. Consequently, it has considered the approved scheme as a fallback position to an acceptable degree.
 7. Concerning what level of protection should be afforded to the window, the Report sets out a cogent explanation of why it considers the window performs an important function, whilst acknowledging that it serves a non-habitable room. Again, the Council's position is not without evidence.
 8. In relation to the other examples of what the applicant considers are very similar developments, these are contained in the Appeal Statement, a document which is dated after the Council decision. In any event, matters in relation to the effect on living conditions are very much dependant on the particular site circumstances and the specifics of a proposal, even where there appears to be some degree of similarity.
 9. Overall, the Council has explained its concerns satisfactorily to substantiate the reason for refusal. Even though I take a different view in my appeal decision, it is not a case where a contrary view could not be taken. The Council has not, therefore, 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. Nor has it made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR

¹ Council ref: 19/00125/PFUL3