



Costs Decision

Site visit made on 16 June 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Costs application in relation to Appeal Ref: APP/W1525/W/20/3244977 69 Torquay Road, Chelmsford CM1 7NX

- 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 S Oldroyd for a partial award of costs against Chelmsford City Council.
 - The appeal was against the refusal of planning permission for the erection of a 2-storey detached dwelling and a 2-storey rear extension to the existing dwelling.
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Decision

1. The application for a partial award of costs against Chelmsford City Council is refused.

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Applicant indicates that the application for costs is made on the basis that the Council behaved unreasonably in refusing planning permission in relation to the second reason for refusal, relating to living conditions.
4. The second reason for refusal relied upon the, at the time of decision, emerging Policy MP4 from the emerging Chelmsford Draft Local Plan (emerging LP). The decision on the appeal application was made in November 2019. The Inspector's Report into the emerging LP was released after that in February 2020. It was not therefore clear at the time of the decision on the appeal application if emerging Policy MP4 would be subject to further modifications. It therefore had limited weight at the time of determining the appeal application.
5. However, the reason for refusal also relied on the National Planning Policy Framework (the Framework), which is an important material consideration. It was also substantiated on the basis of lack of outlook and ventilation to a habitable room, which is a reasonable basis on which to consider the effect of a proposal on the living conditions of future occupiers, and which complies with the thrust of the guidance in the Framework. It was therefore a reasonable expectation of the Council that the eventually adopted wording to Policy MP4 would retain support for adequate outlook and ventilation to habitable rooms.
6. The Applicant attempted to submit a revised drawing during the course of the appeal application. The revised drawing would have changed the high level slot

window to Bedroom 5 in the flank elevation to a normal window. The drawing was not accepted by the Council. Accepting the revised drawing would have necessitated re-consultation with neighbours due to the changes to overlooking of neighbouring properties as a result of the proposed revised window. It may even have led to allowing for unacceptably harmful overlooking of neighbouring properties. The Council were due to refuse planning permission with regard to the effect on character and appearance in any event and the revised drawing would not have overcome that reason for refusal.

7. I acknowledge that sometimes extensions of time may be agreed. The Applicant has provided an example of the Council entering into negotiations to do so in relation to a different application. However, each application must be considered on its own merits and there was no compulsion on the Council to agree to extend the time of the appeal application. In this case, given the potential introduction of new harm through overlooking and that the revision would not have overcome the identified harm to the character and appearance of the area, in this instance I do not view it as unreasonable behaviour of the Council to determine the application on the basis of the drawings as originally submitted.
8. The Applicant has highlighted the Council's suggested condition relating to a previous appeal at the site, requiring an obscure glazed and unopenable window. However, suggested conditions are required to be put forward in support of appeals as part of the appeal process, and do not indicate a Council's preference on how to approach an issue. In this instance, an obscure glazed and unopenable window would not have overcome the Council's concerns with lack of outlook and ventilation, and it was not therefore unreasonable behaviour of the Council not to seek to resolve the issue in this manner.
9. The Council set out adequate reasons to explain its position on the effect of the proposal on the living conditions of future occupiers. Whilst I do not agree, as can be seen from the related appeal decision, this was a matter of planning judgement and I consider that the Council did not apply its judgement in an unreasonable manner that caused the Applicant unnecessary expense.

Conclusion

10. Taking all of the above into account, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

O S Woodward

INSPECTOR