



Costs Decision

Site visit made on 29 June 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Costs application in relation to Appeal Ref: APP/X1355/W/20/3251179 35 Hawthorn Terrace, Durham DH1 4EL

- 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 Nick Swift for a full award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for change of use from existing 6 bed small HMO (use class C4) to 8 bed large HMO (use class sui-generis) including erection of single-storey extension to rear, new window to gable elevation and rooflights to accommodate a loft conversion.
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Decision

1. The application for an award of costs is partially allowed 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 regards to amenity space, the proposal would lead to a reduction in the space available in the rear yard and would increase the number of occupants of the dwelling. Whilst I have disagreed with the Council's conclusions in respect of outdoor amenity space, due to the circumstances of the appeal proposal I do not consider that the Council's concerns on this matter were so without foundation as to represent unreasonable behaviour. Even allowing for decisions made in respect of other properties in the area, the provision of amenity space within the appeal site is an important consideration and it is appropriate to consider each case on its individual merits.
4. However, the Council's reason for refusal also refers to issues of noise and disturbance. Whilst I acknowledge that there may be a degree of planning judgement in respect of this matter, clear evidence should be provided to ensure that the Council's decision is robustly justified. Whilst reference was made to a history of complaints in this area, there is no substantive evidence that the proposed limited increase in the number of residents would lead to a material increase in noise and disturbance in the area. The appeal decision¹ referred to by the Council in support of its case was also in a substantially different context compared to the appeal proposal.

¹ APP/X1355/W/19/3232557

5. I consider that the Council's reason for refusal on this matter is unacceptably vague and based on generalised assertions without substantive supporting evidence or analysis.
6. To the extent that I have concluded that the Council's decision in respect of amenity space was not unreasonable, this has not led to the prevention or delay of a development which should clearly be permitted. However, I find that the Council's decision was unreasonable with regards to noise and disturbance. I am mindful that the appellant has appointed a consultant to address these issues and he has therefore been put to extra expense through the appeal process.
7. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the Council's reason for refusal other than in respect of insufficient amenity space, is justified.

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 Durham County Council shall pay to Nick Swift the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's reason for refusal other than in respect of insufficient amenity space; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the 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.

David Cross

INSPECTOR