
Costs Decision

Site visit made on 27 October 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Costs application in relation to Appeal Ref: APP/D1780/D/20/3257385 3 Evesham Close, Southampton SO16 3PG

- 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 L Walford for an award of costs against Southampton City Council.
 - The appeal was against the refusal of planning permission for single storey side extension, roof alterations including front and rear dormers to provide additional first floor accommodation, raised deck to rear elevation.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 028 of the Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking an award of costs on substantive grounds.
4. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
5. The applicant's main concern is that the Council's second reason for refusal fails to take into account the Inspector's decision in respect of a previous appeal¹ for a similar scheme. Having regard to the matter of the impact of the proposal on the privacy of the occupiers of 6 Grendon Close, the Inspector concluded that, notwithstanding the failure to achieve the minimum rear separation distance between properties stipulated in the Council's

¹ APP/D1780/D/19/3238170

Supplementary Planning Document *Residential Design Guide 2006*, the proposal would be acceptable.

6. The Inspector found that the introduction of an additional first floor rear elevation bedroom dormer window, which was proposed to be of a larger size than the dormer of the current appeal proposal, and sited in the same position in relation to No.6, would not result in a materially harmful impact on the privacy of the occupiers of that property in respect of overlooking to habitable rooms. In making this assessment, regard was given to the existing first floor rear elevation bedroom window in the appeal property.
7. I find no cogent evidence that the second reason for refusal in respect of the current appeal has taken account of the previous Inspector's findings. The appeal decision is recent, and the appeal property remains unaltered in respect of the existing rear first floor window. The Council has made no reference to the previous appeal decision within the Officer Delegated Report or the decision notice, and has not demonstrated that this material consideration has been taken into account during the determination of the planning application.

Conclusion

8. I therefore find that, by including the second reason for refusal, the Council has persisting in objecting to an element of a scheme which an Inspector has previously indicated to be acceptable, and that this has comprised unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance. A partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, is therefore justified.

Costs Order

9. 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 Southampton City Council shall pay to Mr L Walford, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal.
10. The applicant is now invited to submit to Southampton City 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Leonard

INSPECTOR