

Costs Decision

Site visit made on 27 October 2020

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Costs application in relation to Appeal Ref: APP/X1545/D/20/3250883 1 Springfield Road, Burnham-On-Crouch CM0 8TF

- 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 Stefan Van Der Marel for an award of costs against Maldon District Council.
 - The appeal was made against the refusal of planning permission for a 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 advises that costs may be awarded where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's principal basis for claiming full costs relates to the Council's alleged unreasonable behaviour with regard to refusal of an application for prior approval for the extension proposed in the current appeal. In particular, it is contended that a condition imposed on the original permission for the appeal property and related estate development, which has had the effect of removing permitted development rights, is imprecise and out of date and should not have been applied in the way it was by the Council.
 4. The applicant's view is that had the condition not been applied in this way then the extension could have been built without the need to apply for planning permission, thereby negating the need to appeal against the Council's decision with the related costs that that process entailed.
 5. In response, the Council contends that the wording and purpose of the condition are clear and that the original purpose of the condition, to avoid detrimental impact from alterations or additions to the development as first built, is still extant.
 6. My understanding is that the condition in question was imposed on the original permission for all or part of the residential estate in which the appeal property
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is located. Therefore, what the applicant is seeking in this costs application, in effect to find that the condition in question no longer has any justification and should be set aside, has wider implications beyond this appeal, which involves an extension to a single dwelling affected by the condition. As such, this raises issues that are beyond the scope of this appeal.

7. However, as a general principle, Councils are not under any specific duty to review conditions if they consider that they continue to have effect and meet the relevant tests. Also, current national policy in the National Planning Policy Framework does not preclude conditions which seek to impose the type of controls that the Council indicates apply here. Instead it says that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so¹.
8. The Council clearly considers in its response that justification for such restrictions does exist across a wider area than just the appeal property. It is not for me through this costs application related to an appeal involving an extension to a single property to second guess that conclusion. The fact that some properties in the area have been extended does not have a direct bearing on this matter, particularly where it is unclear on what basis such development was undertaken. Therefore, on the basis of the information provided I find no unreasonable behaviour with regard to the principal ground for seeking costs.
9. The applicant additionally contends that the Maldon District Design Guide SPD should not apply to existing development. I disagree as it is common practice for a Council to produce design guidance that applies both to extensions and alterations to existing properties as well as to new build development. Similarly, I do not agree with the applicant's interpretation of Policy D1 of the Local Plan. The reference to usable private and public amenity spaces relates to its provision and retention in development, rather than an overall assessment of the availability of both public and private spaces. The two are capable, therefore, of being mutually exclusive as a development might affect or provide private spaces, but not public ones (or vice versa) or it could involve both.
10. As such, the Council was not bound to take account of the availability of public space near the appeal site; it has adopted policies and published standards for private garden space and it is entitled to rely on these. Similarly, its reference to an appeal which it considered relevant to the current appeal does not involve an unreasonable approach. These are matters of judgement and interpretation and while I disagreed with the Council's approach and found differently in this case, this does not mean that the Council acted unreasonably.
11. Finally, the applicant contends that the Council did not provide evidence to support its argument that the extension would have a detrimental impact on the applicant's quality of life. However, as the Council contends, permanent changes sought through development proposals need to be considered in the long term, with regard to both current and future occupiers' needs. This was reflected in the decision notice. The basis for the Council's decision was clear: the shortfall from the published standards which it considers are necessary for appropriate levels of private garden space. For these reasons, there is no unreasonable behaviour on the Council's part.

¹ Paragraph 53.

12. Accordingly, having considered this costs application on its merits, for the reasons given I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

J Bell-Williamson

INSPECTOR