



Costs Decision

Site visit made on 1 February 2021

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 24th February 2021

Costs application in relation to Appeal Ref: APP/Y0435/W/20/3255213 38 Queensbury Lane, Monkston Park, Milton Keynes MK10 9PQ

- 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 A Al Shaikh for a full award of costs against Milton Keynes Council.
 - The appeal was against the refusal of planning permission for a four storey family dwellinghouse, inclusive of basement floor and light-well.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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 process¹.
3. There are 7 claims to assess. Firstly, whether the Council provided information that is manifestly untrue. Secondly, whether the Council prevented development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Thirdly, whether the Council failed to produce adequate evidence to substantiate its reasons for refusal by making vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. Fourthly, whether the Council failed to determine similar cases in a consistent manner.
4. Fifthly, failing to grant permission for a scheme that is the subject of a recently expired permission where there has been no material change in circumstance. Sixthly, whether the Council failed to engage positively with the appellant to the extent that the appeal was made which otherwise would have been avoidable. Lastly, whether the Council failed to review its case promptly following submission of the appeal and whether it failed to enter discussions regarding common ground.
5. In terms of the first three claims, in its reasons for refusal the Council explained that the design of the proposed dwelling would result in harm to the character and appearance of the area and the living conditions of neighbours, citing those policies of the development plan the proposal would be contrary to. The officer report expanded upon these reasons. Whilst the Council's design analysis was not particularly detailed, and includes reference to concerns that the house could be separated into flats, through its reason for refusal and

¹ Paragraph: 028 Reference ID: 16-028-20140306, 'Appeals', 'Why do we have an award of costs?'

officer report it presented respectable evidence to substantiate its reason to refuse planning permission. As a result, it did not act unreasonably.

6. Turning to the fourth and fifth claims, the front and rear elevations of the appeal proposal and its distance from the rear boundary with 12 Perivale are materially different to the previous permission for a house on the site. Similarly, overlooking from the rear elevation of the houses at 34 and 36 Queensbury Lane of neighbouring houses on Perivale to the rear and their back gardens is minimised by a significant proportion of their rear elevations facing the blank flank elevations of the houses on Perivale. As a result, the Council did not act inconsistently in refusing permission for the appeal scheme.
7. In relation to the sixth claim, PPG emphasises the benefits of pre-application engagement to improve the likelihood of the success of a planning application². This is an approach that the Council actively pursues with its pre-application service. PPG also advises that it is at the discretion of the local planning authority whether to accept changes to an application after it has been submitted³. Given these two considerations, and the significant changes to the design of the dwelling that would have had to occur to make it acceptable to the local planning authority, the Council acted reasonably and engaged positively with the appellant in suggesting that the application was withdrawn and that the pre-application process was engaged with.
8. With regard to the last claim, there is nothing to suggest that the Council did not review its case promptly following receipt of the appeal. Its decision to rely on its officer report, rather than submit an appeal statement, indicates its confidence in the strength of its case. As the appeal has been conducted by way of written representations, there is no requirement for the Council to enter into discussions regarding common ground.
9. Taking all these matters into account, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector

² Paragraph: 001 Reference ID: 20-001-20190315, 'Before submitting an application', 'The value of pre-application advice'

³ Paragraph: 061 Reference ID: 14-061-20140306, 'Making an application', 'Changes after validation of an application'