



Costs Decision

Site visit made on 1 June 2021

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2021

Costs application in relation to Appeal Ref: APP/D1590/W/20/3261752 2 Coptfold Close, Southend-on-Sea, SS1 3SY

- 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 Bysouth for a full award of costs against Southend-on-Sea Borough Council.
 - The appeal was against the refusal of planning permission to convert dwellinghouse into two self-contained flats, erect part single/part two storey side extension, erect part single/part two storey rear extension, alter elevations, layout parking to front.
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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 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.

The Application

3. The council has not justified the refusal and the reasons for it. The first reason for refusal is based on the "loss of a family sized dwelling", but that is not the case as the top flat is a family sized dwelling. Thus the very essence of the harm alleged has not occurred. Moreover, the 3-bed unit is a significantly preferable mix to that which exists (see DM7 table 2). Furthermore, not enough weight has been given to the addition of one net dwelling within a tilted balance context.
4. The council was influenced by the actions of a councillor and the 40 objections; such matters should be taken into account but the council should make its decision based on its planning policies, and not be unduly influenced by third parties, based on arguments that do not stand up to scrutiny.
5. As to the second reason for refusal, had that been the only matter, a re-submitted application could have been made, with the revised plan which would not have incurred the costs of the appeal.
6. The council has behaved unreasonably and thereby caused the appellant to incur unnecessary or wasted expense in the appeal process.

The Rebuttal

7. The council's reasons why the appeal scheme was refused for the first reason are explained in the decision notice and the officer's report. The point made by the appellant, about a 3-bed unit being preferable, is not accurate and does not relate to the cost application.
8. With regard to the subdivision of the rear garden, the appellant assumes that it is acceptable and for this reason dismisses the second reason for refusal. This fails to consider that there was no proposed subdivision of the garden to be considered by the LPA as the relevant plan was submitted very late in the planning process. The proposed arrangement is problematic as demonstrated in the council's appeal response which highlights that the proposed rear garden layout would materially harm the character of the area and contradict the urban grain; that the amount of amenity space for the larger flat is not considered to be appropriate for the level of accommodation; and the proposed access arrangements would be inconvenient for future occupiers. Moreover, there is concern that the smaller amenity space for the ground floor flat¹ would also be of unsuitable quality due to the resulting overlooking caused by the proposed upper floor flat. Thus the second refusal reason is fully justified.
9. Finally, the appellant states that not enough weight has been given to the addition of one net dwelling within a tilted balance context. This point has been addressed in the officer's report to the committee and the council's response to the appeal. The weight to be given to each material planning consideration is for the decision maker to decide in line with trite case law.
10. Overall, both reasons for refusal are clear, precise, detailed and have planning merit. A reasonable reading of the decision notice, together with the officer's report, clearly explains the reasoning behind the council's decision to refuse the scheme on these two grounds and the demonstrable harm that would be caused by the proposal.

Conclusions

11. As will be seen from my decision issued on this case, I have decided in favour of the appellant on the substantive question of whether the proposed development should be permitted. However, that does not necessarily mean that the claim for costs is justified.
12. In relation to the first refusal reason, the council points to the explanation in the decision notice and the officer's report. This reason for refusal is supported by a criterion of policy CP8. The officer's report refers to this policy and the need to safeguard an adequate stock of single family dwellinghouses, and goes on to argue that the borough has a higher proportion of flats/maisonettes and a housing stock comprised of a greater proportion of 1-bed units and smaller properties, a consequence of which is that there is a lower percentage of accommodation of a suitable size for families. The officer also addresses the fact that one of the proposed flats would accommodate three bedrooms, but given the limited amenity space, that flat is found to be unacceptable and unlikely to be suitable for a family. Whilst I have not agreed with that assessment, it is not an unreasonable judgement to make, and supports the decision to refuse.

¹ This is incorrect in as much as the submitted plan of the subdivision of the garden shows that the areas are of equal size.

13. The shortcoming of the amenity space, as viewed by the officer, is dealt with in the reference I have made to it in paragraph 12 above, but the additional point is made about the very late submission of the plan showing how the amenity area could be subdivided. It appears that this plan was submitted as soon as it became apparent to the appellant that there was a reason for refusal being put forward on that basis. At that point, it was unreasonable for the officer's report to committee to be amended, and the concern about consultation was also in mind.
14. Of course, as the appellant points out (paragraph 5 above) had that been the only matter, a re-submitted application could have been made, with the revised plan and so would not have incurred the costs of the appeal. I have already concluded that the judgement behind the first refusal reason was not unreasonable; since the appellant considered that there was an arguable case in respect of that first reason, the need to appeal was inevitable. In addition, the appellant seems to have recognised that there was a shortcoming in the application, since a revised plan was submitted to address the point. That is not surprising because it is quite normal and appropriate for such an application to show how amenity space would be shared in a flatted development.
15. The appellant's reference in the appeal to the 'tilted balance' adds little or nothing to the case, since the main case is that the appeal development is in accord with the policies of the development plan.
16. In light of the above, the current appeal proposal was refused for reasons that were based on planning judgements that were not unreasonable. The appeal was not necessitated by unreasonable behaviour by the council, and therefore an award of costs is not justified.

Terrence Kemmann-Lane

INSPECTOR