



Costs Decisions

Site visit made on 5 March 2021

by Euan FS Pearson BA(Hons) BTP FRGS MRICS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2021

Costs application A in relation to Appeal Ref: APP/B0230/D/21/3266740 63 Copthorne, Luton LU2 8RL

- 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 & Mrs Sheaf for a full award of costs against Luton Borough Council.
 - The appeal was against the refusal of planning permission for ground floor extension with part two storey over.
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Costs application B in relation to Appeal Ref: APP/B0230/D/21/3266740 63 Copthorne, Luton LU2 8RL

- 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 Luton Borough Council for a full award of costs against Mr & Mrs Sheaf.
 - The appeal was against the refusal of planning permission for ground floor extension with part two storey over.
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Decisions

1. The application A for a full award of costs is refused.
2. The application B for a full award of costs is refused.

Preliminary Matter

3. There are two applications for costs relating to the same appeal proposal. Whilst I have considered each application on their own merits, to avoid duplication, I have dealt with both applications together.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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 process.

Costs Application A

5. The Appellant submits that the Council should not have refused permission, thus avoiding having to appeal, and that its reasons for doing so are only one subjective opinion which has not been supported by objective analysis.

6. It is further submitted that the Council is being unreasonable refusing to permit any form of first floor extension; and that the Council made its determination without considering previously approved proposals and to cite massing and scale for such a small addition to a large dwellinghouse is unreasonable and overzealous.
7. The Council has responded that it considered the planning merits of the proposal and that material considerations indicated that the proposal was contrary to the provisions of the Luton Local Plan and the National Planning Policy Framework. The Council also sets out that the Appellant appears to have misinterpreted a previous reason for refusal, as the only real changes to the appeal proposal related to the proposed materials as opposed to the prominence and unsympathetic nature of the proposal to the character and context of the area.
8. In this case, the assessment on the character and appearance issue was clearly a matter of planning judgement. Whilst I have found in favour of the Appellant in my decision, given the subjective nature of the matter in dispute, I find that the Council has provided sufficient evidence to support its judgement to the extent that it did not act unreasonably in refusing planning permission. Furthermore, from the evidence before me there was nothing to suggest that the Council would refuse any form of first floor extension.

Costs Application B

9. Following on from the Appellant's application for costs, the Council made a counter claim on the basis that the Appellant has applied for an award of costs but has not provided any justification whatsoever for the claim and the Council considers that the application is vague, vexatious and unjustified. As a result, the Council says it has been put to unnecessary and wasted expense having to respond. In addition, that the Appellant has misinterpreted the reasons for refusal and failed to engage with the Council through the pre-application advice service.
10. In response, the Appellant disputes the assertion that it has misinterpreted the reasons for refusal and that the appeal proposal is markedly different from previous proposals. In addition, that using the pre-application advice service would not have resulted in a different Council position.
11. In my view, the seeking of an award of costs as part of the appeal process is not unreasonable in itself and any such decision rests with whether any unreasonable behaviour occurred. In this case, I found in favour of the Appellant in my appeal decision, but not to the extent that the Council acted unreasonably in refusing planning permission. In these circumstances, I find it entirely reasonable that an Appellant may seek an award of costs.
12. Whilst the Council was given the opportunity to respond to the costs application, it was not obliged to do so. In this case, the Council considered it necessary to comment. Time spent responding to appeals (and costs applications) is part of the normal workflow of local planning authorities. Therefore, I find that the Appellant did not act unreasonably in making an application for costs.

Conclusions

13. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, by either party, and that an award of costs is not justified in either application.

Euan FS Pearson

INSPECTOR