
Costs Decision

Site visit made on 21 June 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Costs application in relation to Appeal Ref: APP/B0230/W/21/3269078 54 Mossbank Avenue, Luton, Bedfordshire LU2 9HH

- 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 Baciu for a partial award of costs against Luton Borough Council.
 - The appeal was against the refusal of planning permission for a 2 bed detached dwelling in garden of existing house.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicants allege that the Council behaved unreasonably by imposing its second reason for refusing planning permission (which relates to the effect upon adjoining living conditions) and that vague, generalised or inaccurate assertions about the proposal's impact were made inconsistent with pre-application advice previously obtained.
4. Whilst the reason for refusal in question does not definitively identify the properties deemed to be affected, an understanding of the Council's position can be gained from reading its Case Officer Report, where No 54 Mossbank Avenue (No 54) and No 1 Gresham Close (No 1) are specifically referenced.
5. The Council considered that the proximity of the proposed dwelling to No 54's entrance door (the entrance door) would have led to loss of light, visual intrusion and an increased sense of enclosure, so as to cause significant harm to the amenities of No 54's occupiers.
6. I am led to understand that the entrance door serves a downstairs hallway, as opposed to any internal space that could be correctly identified as a habitable room, and it has not been suggested or evidenced otherwise. Furthermore, as was apparent upon inspection, the upper panel and sidelight to the entrance door are comprised of patterned glass that would inevitably restrict available outlook for existing occupiers. It was also observable that a range of primary

openings/glazed features are in place to both the front and rear of No 54, offering access to plentiful light and outlook.

7. To my mind, it was insufficient to seek to rely on the scale and proximity of proposed development to an existing opening to demonstrate significant harm to adjoining living conditions. Indeed, whilst the development proposal would have undeniably led to reduced natural light being received by the entrance door, no assessment of the nature of the internal space served is contained within the Case Officer Report. Furthermore, the evidence before me indicates that the presence of a wide array of primary openings/glazed features (that would have been largely unaffected by the scheme) was not suitably factored into the Council's decision-making.
8. The new dwelling would have had the effect of enclosing a pathway, which would have run from the front to the rear of No 54 (via the entrance door). However, this pathed space would not have provided a location where No 54's occupiers would have been likely to spend any significant period of time. Indeed, a sizeable rear garden and further retained garden space to No 54's frontage would have prevailed and provided readily useable external amenity areas. When again noting the patterned specification of the entrance door's glazing, it was neither reasonable nor accurate to find that the proposal would cause harm to No 54's occupiers through visual intrusiveness or causing a sense of enclosure.
9. The Council also considered that the occupiers of No 1 would experience an increased perception of overlooking and loss of privacy that would lead to significant harm being caused to their amenities. However, even when acknowledging the plan to demolish an existing single storey garage adjacent to No 1's grounds, it is difficult to understand the rationale behind these assertions. The newly proposed dwelling would have offered not dissimilar outlook to that provided from the rear of No 54 and across intervening garden spaces. Furthermore, the external space to the front and side of No 1 (which the rear elevation of the new dwelling would have faced towards) is not sensitive in the sense that views of it are already readily attainable from publicly accessible vantage points. It was thus unreasonable to find that the appeal scheme would have caused harm to the amenities of No 1's occupiers due to any increased perception of overlooking or loss of privacy.
10. The pre-application advice given by the Council was offered on a non-prejudicial basis such that it would not have been unreasonable to determine the subsequent planning application in a manner that differed to the initial advice offered. However, this is on the premise that the reasons for taking such an approach were properly and clearly substantiated. In this instance, I find that they were not. Indeed, a lack of objective analysis led to inaccurate assertions about the scheme's impacts being made and to conflict with Policies LLP1 and LLP25 of the Local Luton Plan 2011-2031 (adopted November 2017), in so far as they relate to the Council's second reason for refusing planning permission, being incorrectly identified.
11. I therefore find that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. Having had regard to all matters raised, a partial award of costs is therefore justified.

Costs Order

12. 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 Luton Borough Council pay to Mr & Mr Baciú 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 refusing planning permission, which alleges that the proposal would injuriously affect the amenities of adjoining properties; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicants are now invited to submit to Luton Borough 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.

Andrew Smith

INSPECTOR