
Costs Decision

Site visit made on 19 April 2021 by Hilary Senior BA (Hons) MCD MRTPI

Decision by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 July 2021

Costs application in relation to Appeal Ref: APP/R0660/W/20/3266036 15-17 Edleston Road, Crewe CW2 7HJ

- 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 E EcEvoy for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for rear extension to create additional apartments at second floor.
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Decision

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

Appeal Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The 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 may be awarded to any party regardless of the outcome of the appeal.
4. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as providing information that is shown to be manifestly untrue or inaccurate, or deliberately concealing relevant evidence, and substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations or fails to provide evidence to substantiate the reasons for refusal.
5. The application for costs centres on the applicant's concern that the Council acted unreasonably in reaching its decision on the planning application by relying on the Technical housing standards – nationally described space standard (NDSS), by not determining planning applications in a consistent manner and not substantiating reasons for refusal in regard to the proposed dormers.

6. The NDSS has not been formally adopted in local planning policy although it was relied upon in the Council's refusal reason. The PPG makes it clear that where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan.
7. In this regard I find that it was unreasonable of the Council to cite the NDSS and the applicant's time and expense in preparing evidence in this respect resulted in costs which should not have been necessary in the appeal process, had the Council adhered to the established guidance in the PPG.
8. Whilst the previous application was for apartments, there were clearly differences between the applications, including the number of apartments and alterations to the building.
9. The PPG is clear that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.
10. It was entirely reasonable for the Council to assess the proposal afresh given the nature of the scheme. Moreover, the Council substantiated its refusal reason, making reference to development plan policy as well as national planning policy. Therefore, the Council did not prevent development that should have been permitted. Whilst I appreciate that the applicant does not agree with the outcome of the planning application, the Council did not behave unreasonably.
11. Consequently, the matter of the effect of the proposal on the character and appearance of the area was a fundamental disagreement between the parties which could have only been resolved by way of an appeal. The applicant's costs in defending this aspect of the appeal was therefore a necessary part of the appeal process. As such unnecessary or wasted expense, as described in the PPG has not been demonstrated. Therefore, an award of costs on this issue is not justified.

Recommendation and Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated in respect of the Council's reliance on the NDSS in its first reason for refusal. Therefore, I recommend that a partial award of costs is justified in this respect only.

Costs Order

13. 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 Cheshire East Council shall pay to Mr E EcEvoy the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of responding to the NDSS; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit

to Cheshire East 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.

Hilary Senior

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree that a partial award of costs is justified, and I make that award in the terms set out above.

RC Kirby

INSPECTOR