
Costs Decision

Site visit made on 21 June 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2021

Costs application in relation to Appeal Ref: APP/W1905/W/21/3270131 13 Westfield Close, Waltham Cross, Hertfordshire EN8 7EY

- 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 and Mrs S Dean for a full award of costs against Broxbourne Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a new three-bedroom dwelling to include installation of rear facing solar panels to proposed roof.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. A local planning authority could be vulnerable to costs being awarded against it if it prevents development which should clearly be permitted or has failed to produce evidence to substantiate each reason for refusal and which is unsupported by objective analysis.
3. The appellant asserts that the Council made a decision that was vague, imprecise and lacked clarity. The root of the claim is that the Council did not clearly define how occupiers of the proposed dwelling would suffer poor living conditions due to the proximity of the railway line. Furthermore, it is claimed that the officer report found conflict with policy EQ1 of the Broxbourne Local Plan (LP), but this did not manifest within its reasons for refusal resulting in a muddled decision. In addition, the applicant asserts that the second reason for refusal could have been resolved at an early stage during the Council's consideration of the proposal.

Refusal reason one

4. In my main decision, I concurred with the appellant that the greatest impact on a future occupier's living conditions of the proposal would be likely to be from the noise of passing trains. The Council did not specifically identify this affect, but also did not challenge or refute the findings of the appellant's Noise Impact Assessment. I found in my main decision that the noise affects could be sufficiently mitigated with the measures identified in the Assessment.

5. The Council refused the application despite no objection having been raised by the Environmental Services Department subject to a condition, inter alia, requiring the submission of a noise survey. As such at the time of making its decision, the harm the Council found to living conditions was unsubstantiated.
6. The National Planning Policy Framework and Planning practice Guidance requires developers to show how a proposal would achieve a good standard of amenity. The appellants' Noise Assessment illustrated that the proposal would provide an acceptable living environment if it included suitable mitigation. However, following receipt of the Noise Assessment, the Council compounded its unproven assertion of harm by failing to then comment on the submitted Noise Assessment or explaining whether this addressed its concerns.
7. In combination, these actions amount to unreasonable behaviour. The Council was unable to support its contention of harm and consequently, failed to provide substantive evidence to demonstrate that the proposal would have a harmful effect on the living conditions of future occupiers.

Conflict with policy EQ1

8. The officer report identifies, under a section entitled 'Residential Amenity' that the proposal would fail to meet the requirements of Policy EQ1 of the LP. Policy EQ1 states that proposals which generate dust, noise and odour must not result in a material harm to the amenity levels in an area. It is therefore apparent to me that this policy is not relevant to the proposal and hence quite reasonably did not form part of the Council's reason for refusal. Therefore, whilst the officer report is confusing in its reasoning, the decision notice itself is clear and unambiguous by precluding mention of policy EQ1.

Refusal reason two

9. The second reason for refusal related to the internal layout of the proposed dwelling and its failure to comply with the National Space Standards with respect to bedroom three. The appellants' amended plan adjusted the location of an internal wall to the satisfaction of the National Standards. As a result, the Council withdrew its objection with respect to this reason for refusal.
10. I tend to concur with the applicant that this matter could have been quickly resolved during the application consideration process. It is therefore unfortunate that such discussion did not take place. However, the National Standards are a common requirement of many Local Planning Authorities and can therefore be readily understood and complied with. The Council could have requested this minor adjustment. Nevertheless, it is principally charged with making decisions, within its prescribed 8-week time-frame, in the interests of the delivery of an efficient planning service. Therefore, although it is regretful that the Council did not seek this minor change, this in itself does not amount to unreasonable behaviour.

Conclusion

11. I therefore find that unreasonable behaviour, in relation to refusal reason one, has been demonstrated. Although reason two was applied in a reasonable manner, as a sole reason for refusal, this alone would have been unlikely to warrant the refusal of the proposal. The Council's behaviour has therefore resulted in unnecessary and wasted expense as described in the Guidance. Consequently, an award of costs, to cover the expense incurred by the

appellant in preparing and submitting an appeal against the reasons for refusal, is justified.

Costs Order

12. In the 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 Broxbourne Borough Council shall pay to Mr and Mrs S Dean, the full cost of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Broxbourne 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.

B Plenty

INSPECTOR