
Costs Decision

Site visit made on 6 September 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2021

Costs application in relation to Appeal Ref: APP/G3110/W/20/3266154 18 Victoria Road, Oxford OX2 7QD

- 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 David Greenhill for a full award of costs against Oxford City Council.
 - The appeal was against the refusal of planning permission for new detached 4 bed three-storey sustainable dwelling and associated landscaping.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council was under no obligation to accept unsolicited amended plans during its consideration of the application. However, the adoption of a new local plan led to a change in car parking requirements. These were entirely predictable and should have been flagged up much earlier in the process. Given the circumstances of this particular case, it would have been prudent for the local planning authority to accept the amended plans when they were first offered. To do so would have narrowed the matters in dispute and avoided the expense of preparing evidence on this issue at appeal. This failure to act positively and pro-actively constitutes unreasonable behaviour.
4. The PPG explains that local planning authorities are at risk of an award of costs if they refuse planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. The Council accepts that its drainage and ecology concerns could have been dealt with by pre-commencement conditions but nonetheless argues that the lack of such details makes the application unacceptable. This response is contradictory. The existence of a refusal reason forced the appellant to prepare bespoke drainage information as part of the appeal process and this constitutes wasted expense. I note that the appellant is not seeking to reclaim costs associated with the Ecology Report.

5. The first reason for refusal relates to the effect of the proposal on the character and appearance of the area. Although it is suggested that officers failed to comprehend the eclectic character of the street, the photographs submitted by the appellant and an unaccompanied site visit from public land during Covid-19 restrictions would have been sufficient to inform an assessment. Attention is drawn to other developments in the Seven Oaks Character Area, but none is directly comparable. As such, the Council was entitled to reach its own view on whether the proposed design would respond to its context.
6. The subsequent decision to grant permission for a dwelling on the site renders illogical the assertion that the land constitutes an important gap between the application property and 22 Victoria Road. This aspect of the Council's case was not substantiated with evidence. However, its concerns over design meant that the appellant's submissions on this issue were necessary.
7. The appellant is aggrieved that the Council did not refer the case to the Oxford Design Review Panel to arbitrate on the dispute over design. I have not been provided with the panel's terms of reference and cannot therefore comment on whether it should have had a role in this case. However, it was not unreasonable for the application to be determined based on an assessment by professionally qualified officers.
8. I do not agree with the Council's assessment regarding the impact on a window in the side wall of 22 Victoria Road. However, Policy H14 of the Oxford Local Plan is not rooted in the strict application of the BRE standards and whether the scheme is policy compliant is a matter of judgement. Appendix 3.7 of the local plan is guidance only. There can be no issue that daylight and sunlight to the window would be affected – the dispute lies in whether this impact would be acceptable having regard to the availability of another window in the room. The Council was entitled to form a view on this. The additional Daylight and Sunlight Report was part of the appellant's rebuttal and this does not constitute unnecessary or wasted expense.
9. I have concluded that the proposed rear projection would have a harmful impact on the living conditions of the occupiers of 22 Victoria Road and therefore it follows that the appellant's evidence on this point was required.
10. The Council's communication with the appellant may not have been perfect, but there is no firm evidence to indicate that this delayed the progress of the application. The appeal could not have been avoided in its entirety. However, the failure to accept amended plans and inclusion of a refusal reason which could have been addressed by condition represents unreasonable behaviour which has led to unnecessary and wasted expense in the appeal process. A partial award of costs is therefore justified.

Costs Order

11. 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 Oxford City Council shall pay to Mr and Mrs David Greenhill, the costs of appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the third and fourth refusal reasons relating to parking and drainage respectively. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Oxford City 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.

Robert Parker

INSPECTOR