



Costs Decision

Site visit made on 16 August 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th October 2021

Costs application in relation to Appeal Ref: APP/N4720/W/21/3271982 3 Windermere Drive, Leeds LS17 7UZ

- 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 G White for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of prior approval for enlargement of a dwellinghouse by construction of an additional storey; the development will go 2.65m above the highest point of the existing roof.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that a local planning authority is at risk of an award of costs for preventing or delaying development which should clearly be permitted. The appellant submits that the Council has behaved unreasonably by refusing the application and defending the appeal. They go on to specify three grounds on which they consider that the Council has misinterpreted Article 3, Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO).
4. First, in the Council's consideration of the amenity of adjoining premises, the appellant submits that impacts regarding light and outlook would only be marginally different between the appeal proposal and a previously approved dormer. However, I have agreed with the Council's conclusions on this matter, in that the scale and subsequent harm arising from the appeal proposal would be materially different than the approved dormer. I therefore cannot agree that the Council has behaved unreasonably on this matter.
5. The appellant refers to overlooking, but the Council has not raised concerns on this issue and it is not referred to in the reason for refusal.
6. Second, when considering the external appearance of the dwellinghouse, the Council has had regard to the National Planning Policy Framework (the

Framework). The appellant contends that the Council is only required to do this should an adjoining neighbour object to the proposal.

7. However, sub-paragraph (12) of AA.3 of Class AA of the GPDO requires the Council to (a) take into account any representations made to them, and (b) have regard to the Framework so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. The Council must address both (a) and (b), and it is not the case that the latter is only brought into effect if representations are made. The Council's interpretation of the legislation is therefore correct and it has not behaved unreasonably on this matter.
8. Third, that the Council has required a construction management report as part of the application, when this is only required prior to commencement of development. In my Appeal Decision, I have concluded that this could be addressed by condition, and therefore does not represent a reason for refusal.
9. However, the GPDO enables the Council to consider whether sufficient information has been provided to establish whether the development complies with conditions in paragraphs AA.2 of Class AA, which includes a construction management report. Due to the proximity to nearby dwellings, I consider that the Council's intent to consider the adverse impacts of construction as part of the prior approval process are not so without foundation as to represent unreasonable behaviour. Whilst I have disagreed with the Council on the timing of the submission of this report, it has not behaved unreasonably either procedurally or substantively on this matter.
10. The appellant sets out that the second part of their claim for costs is included in their response to the Council's costs application. On this ground, the Council have responded on whether they have shared their understanding of the legislation. Based on the evidence before me, the Council has clearly and logically set out its approach to Class AA, in respect of this appeal as well as other proposals that the appellant has been involved with. Whilst the appellant refers to a lack of guiding principles in relation to this permitted development right, the Council has clearly set out its approach on this matter throughout the planning application and appeal process. Therefore, on this ground, the Council has not behaved unreasonably.
11. I therefore conclude that for the reasons set out above, unreasonable behaviour by the Council resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

David Cross

INSPECTOR