



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 Leeds City Council for a full award of costs against Mr G White.
 - 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 partially allowed in the terms set out below.

Preliminary Matter

2. Subsequent to making its initial application for costs, the Council submitted a supplementary costs application. The appellant was given the opportunity to comment on the Council's submission and I have taken account of the comments raised.

Reasons

3. 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.
4. The Council considers that the appeal proposal has no prospect of success. Notwithstanding the various procedural issues that have been raised by the appeal, the main issues include the effect of the proposal on the external appearance of the dwellinghouse as well as amenity. Whilst I have dismissed this appeal on those issues, these are matters of planning judgement and I do not consider that the proposal is so ridiculous that it had no prospect of success. I have also agreed with the appellant that the matter of a construction management report could be addressed by condition. I therefore conclude that the appellant has not behaved unreasonably with regards to these main issues and the prospect of success at appeal.
5. I note the appellant's comment, provided by the Council, that they have "*no intention of appealing on such a ridiculous permitted development*". However, this related to a different site rather than the appeal before me.

6. The Council contends that a lack of understanding of the process should not form a reason to submit a planning appeal. The appellant progressed the appeal on the basis that the Council must only have regard to the National Planning Policy Framework (the Framework) if any representations are made to the Council. However, the appellant's stance on this matter is incorrect based on the legislation of the GPDO¹. The Council has clearly set this out in correspondence² with the appellant prior to the submission of the appeal before me. Whilst that correspondence related to a different site, the appellant should have been aware of this matter prior to submitting the appeal. The appellant has accepted this error in their comments on the responses from third parties. Nevertheless, progressing this ground of appeal which had no reasonable chance of success, and contrary to the clear advice provided by the Council, represents unreasonable behaviour. The Council has been put to unnecessary expense in addressing the appellant's evidence on this matter.
7. The Council refers to a number of applications and appeals submitted by the appellant across the city in similar circumstances, which it considers follow a general pattern of unreasonable behaviour. I have also had regard to the appellant's comments in respect of understanding the process and purpose of the new permitted development rights. I have some sympathy with the Council on this matter, although it is only the appellant's behaviour and potential expense in respect of this particular appeal which are within the remit of my consideration of costs. Given that I have concluded that the appellant has not behaved unreasonably in respect of the main issues in this appeal, I cannot conclude that the appellant has behaved unreasonably in respect of their wider motivations behind proceeding with the appeal.
8. The Procedural Guide³ states that an appeal should not be used as a bargaining tactic but only as the last resort. The Council submits that this appeal has been used as such a bargaining tactic in respect of a previous refusal of planning permission for front dormer windows. However, it is not unusual for a proposal to be progressed through the planning process to establish a 'fallback' scheme. Within that context, I do not consider that the appellant has behaved unreasonably on this matter.
9. In its supplementary costs application, the Council submits that the appellant has introduced fresh and substantial evidence at a late stage, namely when submitting their comments on the Council's initial application for an award of costs. The Council refers to a list of documents, however not all of these are in front of me as part of this appeal, as has been confirmed to the main parties⁴.
10. Nevertheless, the appellant provided copies of appeal decisions with their final comments on their own costs application, some of which were published at the time of the submission of their final Grounds of Appeal⁵. It was the submission of this new and substantive evidence that led to a delay in the submission of the Council's statement and further costs for the Council in considering the issues raised. The introduction of this new evidence late in the process represents unreasonable behaviour which has led to unnecessary expense on behalf of the Council.

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

² e-mail from Leeds City Council to appellant dated 29 January 2021. Appendix 1 to Leeds City Council's "Response to the Appellant's Application for an Award of Costs against Leeds City Council".

³ Procedural Guide: Planning appeals – England (March 2021)

⁴ e-mail dated 29 June 2021 from the Planning Inspectorate

⁵ "v2 Statement of Case" dated 28 May 2021

Conclusion

11. I have not agreed with the Council on the grounds of the prospect of success of this appeal on the main issues. Nevertheless, the appellant's approach in respect of the consideration of the Framework was unreasonable. The appellant also introduced fresh and substantive evidence at a late stage necessitating a delay in the process and further work on behalf of the Council. This unreasonable behaviour has resulted in unnecessary and wasted expense for the Council. 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 Mr G White shall pay to Leeds City Council, the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the appellant's case on the consideration of the Framework and the submission of evidence at a late stage; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Mr G White, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cross

INSPECTOR