
Costs Decision

Site visit made on 18 October 2021

by Mr C J Tivey BSc (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2021.

Costs application in relation to Appeal Ref: APP/L3815/D/21/3281865 19 Seafeld Close, East Wittering PO20 8DP

- 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 & Mrs Adrian Finn for a full award of costs against Chichester District Council.
 - The appeal was against the refusal of planning permission for raising of ridge height of existing chalet bungalow, insertion of rooflights and obscured gable windows, demolition of rear conservatory for rear two storey pitched roof extension and single storey flat roof extensions.
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Decision

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

Reasons

2. 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. The PPG states that awards against a local planning authority may either be procedural or substantive.
3. Procedurally the applicants state that the refusal notice gave information that was twelve years out of date in respect of their right to appeal. However, their Architect highlights that he is highly experienced, specialising in householder planning applications and I am sure that this is not the first time he has submitted an appeal. Therefore bearing in mind that the applicants were professionally represented and that in any case, the first note appended to the decision notice made reference to the twelve week period within which householders have a right to appeal, I give that specific complaint very little weight in the determination of this application.
4. It is unfortunate that the Planning Officer of the Council only made contact with the applicants on the date that the planning application was to be determined. However to be fair to the officer, they suggested an extension of time for the determination of the proposal to enable the applicants to consider whether to withdraw the proposal. Further, as highlighted by the applicants' agent in their email of the 17 June 2021 at 15:20, they themselves acknowledged that many planning departments have been inundated with householder planning applications whilst operating with overstretched resources; and I have seen nothing to suggest that no option was given to them discuss the merits of the proposal. It is apparent that the

Planning Officer was not supportive of the proposal, but just because that was the case does not automatically amount to unreasonable behaviour.

5. The Planning Officer stated that informally and in good faith that they considered that the principle of a rear extension may have been possible, although in their view significant changes would have been required with a reduction in bulk and height of the extensions. It is quite clear that the email regarding item 2 within the applicants' cost claim was not missed and therefore is a purely hypothetical statement. However as far as I am aware, the application the subject of the appeal was the first one submitted by the applicants and therefore even if the appeal proposal had been refused on the 17 June, they would have had a 'free go, and to state that this demonstrates a reckless disregard for the appellants' costs is in my view over-exaggerated.
6. I note the reference to the Council advising that a 1m clearance would be required around the building, however I have not been made aware of such within the Officer's Report, and neither does it centre within the reasons for refusal.
7. To consider whether a site is small or otherwise is to a large degree subjective; my take on the Council's determination of the proposal was that they considered that the proposal in relation to the site's boundaries and immediately adjacent dwellings was cramped, notwithstanding what I would term a relatively large area of private amenity space situated to the north west. I do however agree, as I highlighted within my appeal decision, that the built context for the site has evolved in recent years and I note that the Officer advised the applicants to look at the extensions that had been constructed at 16 Seafeld Close from which I am led to believe had drawn some inspiration for the proposal that was before me. However, in determining planning proposals, each case must be assessed on its own merits having regard to all material considerations and I am of the view that the Council substantiated its reasons for refusal in a quite detailed report.
8. I note reference to a purported fallback position utilising Permitted Development Rights, however, such a solution would be materially different from the appeal scheme and therefore whilst I understand the applicants' agent's reasoning for highlighting what could potentially be built without the need for an application for full planning permission, in the absence of any Certificate of Lawfulness to demonstrate that that would be the case, I give the fallback position limited weight. Ultimately it was for me to determine the refused scheme and which I found in the applicants' favour.
9. Finally, I acknowledge the reference to documentation, including drawings and the Officer's report not being published on the Council's website in a timely manner, however this does not go to the substance of the case and therefore I consider is not a determining factor in me forming my conclusions on this costs application.
10. All in all, I have found that the Council's Officer report substantiated the reasons for refusing planning permission which did not amount to

unreasonable behaviour resulting in unnecessary or wasted expense for the applicants.

11. Consequently I consider that unreasonable behaviour as described in the PPG has not been demonstrated and the application for a full award of costs is therefore refused.

C J Tivey

INSPECTOR