
Costs Decision

Site visit made on 8 February 2022

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Costs application in relation to Appeal Ref: APP/Q3060/W/21/3270547 19 Gregory Avenue, Lenton, Nottingham NG7 2EQ

- 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 Sandeep Krishan (Flare Homes Ltd) for a full award of costs against City of Nottingham Council.
 - The appeal was against the refusal of planning permission for a rear dormer extension to roof.
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Decision

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

Reasons

2. The Government's 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. Unreasonable behaviour can be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal). The PPG includes examples of where a local planning authority's behaviour might lead to an award of costs.
3. The appellant seeks a full award of costs, on the basis that planning permission should not have been refused and that the Council's decision has led to an unnecessary appeal. The PPG advises that preventing or delaying development which should clearly be permitted can lead to an award of costs against the planning authority.
4. However, I have dismissed the appeal due to the effect of the development on the character and appearance of the New Lenton Conservation Area. Consequently, I do not consider that the overall decision to refuse planning permission was unreasonable or that the appeal was unnecessary. It follows from this that a full award of costs is not justified. It also means that I do not regard the second reason for refusal, which dealt with the effect of the development on the conservation area, as unreasonable. The appeal decision explains why I agree with the Council on that matter, and also explains why the various decisions of the Council and appeal decisions to which the appellant refers do not alter my view.

5. Nevertheless, it is important to consider all aspects of the Council's decision. The PPG establishes that the planning authority should be able to produce evidence to substantiate each reason for refusal on appeal. The Council's first reason for refusal addresses the issue of the intensification of use of the property, which is said to harm the residential amenity of the surrounding area and also undermine the aim of promoting balanced communities.
6. An essential step in assessing these matters was to consider the extent to which the use would be intensified. In this regard the appellant is critical of the Council, arguing that the dormer extension does not, in fact, facilitate an increase in the number of occupants at the property.
7. The Council stated in its delegated report, appended to the decision notice, that 'The dormer provides a bedroom and en-suite bathroom. Prior the provision of the dormer, the number of bedrooms within this property was 4, the number of rooms was increased to 6 through the dormer bedroom and ensuite and the sub-division of a bedroom at first floor'. It should be clear from this statement that the dormer could only, at most, increase the number of bedrooms at the property by 1 (since it has no bearing on the first floor accommodation). Indeed, even that increase cannot be certain, and the appellant has provided a drawing suggesting that none of the bedrooms are dependent on the retention of the dormer, although it is not clear to me that this drawing was available to the Council when it made its decision.
8. However, the Council appears to have considered the proposal on the basis that it would increase accommodation at the property by two bedrooms, the report stating 'By allowing an intensification in the use of the property as a HMO, the dormer and the creation of two additional bedrooms at the property have prejudiced the Council's aspirations of promoting family housing and the creation and maintenance of a balanced community in this area'. It appears to me, therefore, that the Council has over-estimated the effect of the dormer on the number of residents the building could accommodate, which can only have facilitated a single additional bedroom at most. This has infected its analysis relating to both aspects of the first reason for refusal, which is concerned with achieving balanced communities and protecting residential amenity.
9. The Council has development plan policies seeking to ensure balanced communities and the retention of family housing. However, in applying those policies it was important for it to consider the specific effects of this proposal. By misinterpreting the actual effect of the dormer, it was unable to properly assess the proposal against the policies.
10. The Council's consideration of residential amenity was also affected by this error, but was additionally inadequate in other respects. Although a range of amenity considerations were raised, there was no attempt to explain why any of those matters were relevant in this case. There was no attempt, for example, to link the harm the Council alleged to the physical characteristics of the property. Nor was there any reference to any actual problems which may have occurred – a significant omission given that the dormer was in place well before the application was determined. The suggestion that the property would be poorly maintained or have inadequate waste management as a result of the development do not appear to recognise the fact that it is already an HMO. The concern about antisocial behaviour is generalised and not adequately explained.

11. The PPG advises that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, may leave the planning authority at risk of an award of costs against it. In my judgement, the Council's case relating to the first reason for refusal falls into that category and was unreasonable. The appellant will have incurred unnecessary expense in preparing a case to address that issue.

Conclusion

12. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in relation to the first reason for refusal, and that a partial award of costs is justified.

Costs Order

13. 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 City of Nottingham Council shall pay to Mr Sandeep Krishan (Flare Homes Ltd) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the first reason for refusal only, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to City of Nottingham 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.

Peter Willows

INSPECTOR