
Costs Decision

Site visit made on 15 March 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2022

Costs application in relation to Appeal Ref: APP/N1920/D/22/3290833 19 Oakroyd Avenue, Potters Bar EN6 2EH

- 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 David Campbell for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of planning permission for rear dormer and 2 no side Velux windows.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.
3. In summary, the applicant's claim is that Council officers failed to visit the site to assess the proposal and subsequently made ill-considered conclusions as to its impact. It is also alleged that the planning officer was unable to advise the applicant as to the extent of size reduction required to make the proposal acceptable, and that the Council made contradictory statements as to the acceptability of a dormer in principle.
4. The Council rebuts these claims, stating that a site visit was undertaken; that criticism of its reliance on consultee comments is unfounded; that it did assist the applicant by suggesting changes to make the proposal acceptable, and that the appellant has misinterpreted its comments on the principle of the proposal.
5. Issues of design and the effect of a proposal on the character and appearance of the conservation area inevitably involve matters of judgement which encompass necessarily subjective elements. However, it is still incumbent on the Council to substantiate its reasons for refusal.
6. The Council's case was largely based upon the comments of its HC, which concluded that the proposed dormer was too large and would have a '*jarring effect*'. No more explanation was offered as to the precise nature of the harm that would be caused. Conversely, the HC went on to comment that the proposal '*would not remove the legibility of the original form and proportion of*

the property' and that *'the characteristic architectural features that are integral to its contribution to the CA would not be affected.'* Therefore, rather than describing any actual harm to the heritage significance of the conservation area, the HC, and by extension the Council, effectively indicated otherwise.

7. Therefore, the only tangible criticism of the dormer, and the Council's ultimate basis for refusing the proposal, was a vague claim that the dormer window was too large and *'jarring'*. However, the evidence indicates that neither a planning officer nor the Council's HC visited the site itself. The prevailing pattern and similar flat-roofed design of the several rear dormer extensions to neighbouring dwellings was immediately apparent to me upon visiting the site and standing in the rear garden. So too was the generally larger size of these other dormers.
8. The Council dismissed the presence of other dormers due to them being built prior to the designation of the conservation area or introduction of an Article 4 Direction in 2015. However, this failed to acknowledge that they nevertheless form part of the existing pattern of development, into which the proposed dormer would have fitted. The Council also failed to acknowledge that the dormer would not have exceeded the 60% guideline on roof coverage set out within its own adopted guidance.¹ Therefore, no proper basis was offered for the Council's conclusions that the dormer was too large either in respect of the dwelling itself or the surrounding context, wherein the proposed dormer would actually be among the smallest in size.
9. Having regard to the evidence before me, I find that the Council failed to have regard to the prevailing pattern of development, due in large part to the lack of a site visit to the appeal property itself. Crucially, the Council did not clearly express the harm that would be caused to the dwelling or the heritage significance of the conservation area. As a result, the Council's conclusions that the proposal would harm the character and appearance of the conservation area were based on vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis and contrary to its own published guidance. This amounts to unreasonable behaviour.
10. I have had regard to the other points raised by the applicant relating to his attempts to amend the proposal in line with the advice of the HC, the Council's rejection of this plan and the alleged inconsistency between the comments of the HC and the decision notice on whether the proposal was acceptable in principle. Ultimately, my findings above are sufficient for the purposes of determining this costs application, but in these other matters I agree with the applicant that they further demonstrate inconsistent and ambiguous reasoning was given by the Council during the application.
11. For these reasons I find that the Council could not substantiate its reason for refusal in this case. In the planning judgment, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance of the PPG and the applicant has been faced with the unnecessary expense of lodging the appeal.

¹ Planning and Design Guide Supplementary Planning Document (Part E: Guidelines for Residential Extensions and Alterations) (November 2006)

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full 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 the Hertsmere Borough Council shall pay to Mr David Campbell the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the 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.

K. Savage

INSPECTOR