

Costs Decision

Site visit made on 11 July 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th July 2022

Costs application in relation to Appeal Ref: APP/N4720/D/22/3300158 18 Montreal Avenue, Chapel Allerton, Leeds LS7 4LW

- 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 E & R Papaioannou for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for 2 storey side extension and single storey part rear extension.
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Decision

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

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. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. In this case the applicants state that the application is both procedural and substantive.
3. The PPG indicates that local planning authorities are at risk of an award of costs if they behave unreasonably by, amongst other things, not determining similar cases in a consistent manner or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicants indicate that the Council acted unreasonably from a substantive perspective in relation to the Council's first reason for refusal (effect on the street scene). It is put to me that the Council has not substantiated its decision with objective analysis, has not determined similar cases in a consistent manner and has delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. The applicants also indicate that the Council acted unreasonably from a substantive perspective in relation to the Council's second reason for refusal (parking arrangements). It is put to me that appropriate parking will be maintained. Moreover, the applicants main basis for the application for costs in relation to the second reason for refusal is that the Council did not notify the applicants of its concerns and amendments could have been secured to overcome this matter. Thus, narrowing the issues at appeal. The Council has defended itself in relation to these issues.

6. In its Officer Report the Council did not refer to the extension at the attached neighbouring property or other examples of two-storey side extensions in the vicinity including No 26 and 28 King George Avenue (No 26 and 28). Given the location in relation to the appeal site these are material considerations.
7. The Officer Report's analysis focusses on the Council's 2m set back standard within its Householder Design Guide Supplementary Planning Document (2012) (SPD). It is unclear whether the Officer was looking to adhere strictly to the 2m set back or simply that the set back proposed was not sufficient to be considered acceptable to the Council. In any case, the focus of the assessment in the report is against the SPD.
8. I accept that the two-storey side extension with no set back to the attached dwelling (No 16 Montreal Avenue) pre-dates the SPD. Nonetheless, it exists and is part of the street scene and character of the existing pair of semi-detached houses. There is no firm evidence before me as to how this, or other extensions such as No 26 and 28, as material considerations, were taken into account in reaching the Council's decision, as the focus in the report is on the SPD guidance.
9. I do accept that the assessment of effects on the street scene involves a certain amount of subjective judgement. However, the PPG is also clear that local planning authorities are at risk of an award of costs if they behave unreasonably by not determining similar cases in a consistent manner.
10. The extensions at No 26 and 28 did not pre-date the SPD. The Council indicate that they are on a different street to the appeal site and have their own context, including that No 28 is situated on a corner plot. However, the Council do not define what is different about the context of that street. No 28 is on the same corner as the property attached to the appeal dwelling. In this regard, the two original pairs of semi-detached properties are directly comparable in their location on the same corner. Moreover, they were originally of the same house style with a similar spacing to the next pair of dwellings. I cannot therefore accept that they are not similar cases.
11. It follows that I find that the Council has acted unreasonably with regard to consistency in decision-making in relation to its first reason for refusal. In these circumstances, extra costs were incurred in the time countering the Council's position in the appeal and an award in these specific respects is justified.
12. Turning to the second reason for refusal, the PPG is clear that procedural claims relate to the appeal process and not the planning application process. However, one potential substantive reason quoted in the PPG is where the Council refused to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed. Thus, reducing the expense associated with the appeal.
13. The Council's parking requirements are publicly available in its SPD. As such, the parking space dimensions expected would have been available when the scheme was being designed. However, I accept that the inclusion of the second reason for refusal may have come as a surprise based on the previous discussions with the Officer.

14. However, given the applicants reluctance to amend the scheme during previous discussions, I do not consider that the Council acted unreasonably in proceeding to issue its decision. I have reached this conclusion having regard to the applicants Grounds of Appeal, which disputes the merits of the reason for refusal whilst also indicating a willingness to amend the scheme.
15. In this regard, I cannot conclude, on the balance of probabilities, that more positive engagement from the Council would have resulted in amendments being made or the issues to be considered in the appeal being narrowed. It will be seen from my appeal decision that I have found that the proposed parking arrangements would have an unacceptable effect on highway and pedestrian safety in the Avenue.
16. I therefore find that, insofar as it relates to the second reason for refusal, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Conclusion

17. The Council's reasons for refusing planning permission, as set out in its decision notice, consists of two distinct reasons. I have found that the Council behaved unreasonably with regard to consistency in decision-making in relation to its first reason for refusal. However, I have found that the Council did not behave unreasonably in relation to its second reason for refusal.
18. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicants in contesting the first of the Council's reasons for refusal, is justified.

Cost Order

19. 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 Leeds City Council shall pay to E & R Papaioannou the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first of the Council's reasons for refusal, which related to the effects from the two storey side extension on the host property, pair of semi-detached properties and the wider street scene.
20. The applicants are 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. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

Robert Walker

INSPECTOR