



Costs Decision

Site visit made on 26 October 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/W0734/D/22/3303819 10 Kilvington Grove, Middlesbrough TS7 0RL

- 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 Ross and Lara Murdoch for a full award of costs against Middlesbrough Borough Council.
 - The appeal was against the refusal of planning permission for part two storey and part single storey extension to rear and a new entrance door to side elevation.
-

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 only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG states that Local Planning Authorities (LPA) are at risk of an award of costs where there is a *'failure to produce evidence to substantiate each reason for refusal on appeal'* or where there are *'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis'* or *'not determining similar cases in a consistent manner'*.
4. The evidence is that the LPA case officer did not visit the site and that reliance was instead placed on photographs. The case officer report refers to the proposed extension's relationship with the rear of No 11 Kilvington Grove as being an *'excessive extent of overlap'*. While this is a matter that requires some subjective planning judgment, I am not satisfied that the Council's concerns about harm to the living conditions of the occupiers of this property have been reasonably substantiated. Indeed, the case officer report does not provide adequate reasoning about the existing orientation and relationship between the two properties, or in fact the evidence from the neighbouring occupier about windows on the side elevation being opaque and serving non-habitable room space. Furthermore, from a design point of view I do consider that the LPA has reasonably taken into account site specific circumstances as part of its assessment of the planning application.
5. Given the above, I do not find that the Council has reasonably substantiated its view that actual harm would be caused to the character and appearance of the area or to the living conditions of the occupiers of neighbouring properties. In reaching this view, I have also taken into account that there are a number of

- vague and inaccurate assertions in the case officer report about the proposal's impact. For example, it says that the neighbouring gable projection benefits from being '*stepped away from the boundary, which overlaps*'. This is not the case and in fact it is very close to the shared boundary. I am concerned that the stated absence of a site visit by the LPA may have led to this error.
6. The case officer report also states that '*the impacts of the development could be overbearing*' and '*the proposal will result in a loss of daylight although it is considered that this aspect would not be so significant as to warrant refusal of the application in its own right, however it does add to the weight against the proposal*'. Given the use of the word '*could*' it is not clear if the Council considered that actual harm would be caused. This demonstrates weak reasoning and, in any event, there is an absence of detail from the LPA in terms of specifically why and how harm would be caused. While the LPA assert that there would be a loss of daylight, this is not actually supported by any reasonably detailed reasoning or evidence. Furthermore, I am not persuaded that the Council reasonably took into account the supportive comments made by the occupier of No 11 Kilvington Grove as part of the overall planning balance.
 7. In addition to the above, I do not consider that the LPA reasonably took into account other decisions that have been made for similar development in the immediate locality, including a two storey rear extension at No 43 Kilvington Grove. In allowing a similar extension at this property, also in conflict with size restrictions expressed in Middlesbrough's Urban Design SPD 2013, the LPA outweighed such conflict on the basis of no actual harm being caused to the character and appearance of the area or the living conditions of the occupiers of neighbouring properties.
 8. While I accept that each planning application should be determined on its own planning merits, in this case I find that the failure to differentiate between the planning permission at No 43 Kilvington Grove and the appeal proposal amounted to unreasonable behaviour. I have found that the appeal development would also not cause harm in respect of these matters. I find that it is a reasonable expectation of any applicant that LPA decision making is consistent. The LPA did not provide acceptable reasoning to indicate why planning permission was refused for development which was very similar to that approved for a dwelling nearby. This is particularly important in the context that there has been no change to development plan policies or to the SPD for the area.

Conclusion

9. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Therefore, the application for a full award of costs is allowed.

Costs Order

10. 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 Middlesbrough Borough Council shall pay to Mr & Mrs Ross and Lara Murdoch the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Centre if not agreed.

11. The applicant is now invited to submit to Middlesbrough Borough 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.

D Hartley

INSPECTOR