



Costs Decision

Site visit made on 28 October 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Costs application in relation to Appeal Ref: APP/T0355/W/21/3288290 Knoll House, St Leonard's Hill, Windsor, Berkshire SL4 4AL

- 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 James Ambo for a partial award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of planning permission for replacement of existing house with new dwelling of two storeys plus lower ground floor and rooms in roof, detached garage.
-

Decision

1. The application for a partial award of costs is refused.

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.
3. Local planning authorities risk 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. The PPG further makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The applicant seeks a partial award of costs in respect of two of the three reasons for refusal. In relation to the second reason for refusal, it is argued that the Council's conclusions that two neighbouring dwellings would suffer unacceptable losses of light was an assertion unsupported by any technical analysis. This necessitated the commissioning of a report by the applicant to refute this conclusion, which showed no material loss of sunlight or daylight when assessed against widely used guidance¹.
5. The Council argues that its conclusions were based on observations by the planning officer on site and that it is not a requirement for the local planning authority to commission technical studies to support its assessment. It adds that the BRE guidance is not statutory or part of planning policy and it is a matter for the applicant should they wish to commission such a report to support their case.

¹ Building Research Establishment (BRE), Site Layout Planning For Daylight And Sunlight: A Guide to Good Practice

6. I am not referred to any policy or guidance that requires the local planning authority to commission technical evidence as part of its assessment of proposals. The onus is on an applicant to demonstrate that a proposal complies with all relevant planning policies. Where an application lacks persuasive technical evidence, such as a sunlight/daylight report, it is not unreasonable for the Council to reach a view on the evidence available to it, in this case the site inspection. It is not for the Council to produce primary technical evidence, particularly where there is no corresponding evidence from the applicant to rebut and where gathering that evidence would require potentially unavailable access onto the appeal site and/or other land.
7. Rather, decisions are reached on the officer's planning judgement of the evidence submitted and it is common for officers to make assessments on site as to the potential for loss of light. Given the increase in size of the proposed dwelling and the proximity and orientation of neighbouring windows, the conclusions reached by the planning officer were not unreasonable. It was ultimately the applicant's choice to respond to this by commissioning a technical report. Therefore, I find no unreasonable behaviour by the Council in this respect.
8. In respect of the third reason for refusal, the applicant argues that the Council failed to properly consider the proposed landscaping scheme which would have been of good quality. It is also asserted that the Council's officer report contains erroneous statements in respect of the retention and/or removal of trees on site and the distances of the existing and proposed dwellings from the front boundary. The Council points out that its concerns related to the amount of development on site and that the appellant's submission of a landscaping scheme was an attempt to address its concerns, and not a result of unreasonable behaviour.
9. As set out in my main decision, I found that whilst the extent of landscaping proposed would make some positive contribution to the leafy character of the area, it would not be comparable to the site's previous appearance or that of neighbouring properties. Whilst the applicant may consider the details to be sufficient, it was a matter of planning judgement and, given my findings, the Council's conclusions were not unreasonable having regard to the site context and the spread of built form proposed. Whilst noting the measurements given in the officer report, I am satisfied that, on the totality of the evidence before the Council, these measurements were not critical to, nor did they fatally undermine, the eventual reason for refusal.
10. Therefore, I find that no unreasonable behaviour has been demonstrated by the Council in respect of the third reason for refusal.

Conclusion

11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Having regard to all matters raised, an award of costs is not justified, and no award is made.

K. Savage

INSPECTOR