



Costs Decision

Site visit made on 8 January 2023

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

**Cost application in relation to Appeal Ref: APP/Y3425/D/22/3306800
Ben Rhydding, Long Lane, Derrington, Stafford, ST18 9LL**

- 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 Mrs Alice Waters for a partial award of costs against Stafford Borough Council.
 - The appeal was made against the refusal of planning permission for a ground and first floor side extension and first floor rear dormer roof extension.
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Decision

1. I allow the application for a partial award of costs.

Reasons

2. The government's Planning Practice Guidance (PPG) states 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.
3. The applicant seeks a partial award of costs in relation to the Council's second reason for refusal regarding the overlooking of a proposed bedroom window to the private garden area of the neighbouring dwelling, Wimbourne. In the appeal decision I have dealt with this under the heading 'Living Conditions'. She contends that the Council acted unreasonably, in relation to a substantive matter, on the grounds of:-
 - a) vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis;
 - b) refusing planning permission on a planning ground capable of being dealt with by suitable conditions that would enable the proposed development to go ahead.

Ground a)

4. The PPG says that where a local planning authority has failed to produce evidence to substantiate each reason for refusal on appeal or has prevented development that should clearly be permitted according to the development plan, they are at risk of a substantive award of costs due to unreasonable behaviour.
5. The applicant says that during its assessment, the Council should have referred to its 'Design' SPD, to an existing single storey projection, to the width

constraint of the rear garden in limiting its useability and to the main area of garden to the side.

6. Looking at those matters in more detail, the applicant considers in her appeal statement that as the proposed spacing at 11m exceeds the SPD standard, it ought to have been considered acceptable. The Council's report referred to the SPD in regards to the impact on another property, Barncroft, which adjoins the boundary on the other side of the property but not in regard to the impact on Wimbourne. However, the SPD provides guidance only and given the narrow margin of only 0.5m, even if the Council had referred to it, the planning officer would have been entitled to make their own judgment in that regard and it is unlikely that it would have made a significant difference.
7. Whilst the Council did not refer to the rear ground floor projection at Wimbourne, as that is very small and the window in question would be at first floor height it would not make a significant difference to overlooking of the rear garden area, as I noted in my appeal decision. Therefore, the omission of any reference to that was not significant and may not have made a difference to the planning officer's assessment.
8. However, and crucially, the report did not note that the main area of garden lies to the side of that property. Neither did it refer to the fact that the rear area is constrained in its size and outlook. I further noted that it is an area of hardstanding and found that its restricted size and outlook seem to have limited its useability, particularly as the side garden forms the main garden to the property. The matters I have noted in this paragraph were important in my findings. I agree with the applicant that the Council did not make a full assessment of the site characteristics at Wimbourne and that had it done so, then the need for the appeal on that matter could have been avoided.

Ground b)

9. The appellant also states that this issue could have been dealt with by a condition for obscure glazing. I did not address the matter of such a condition in my decision because I concluded that there was no harm in terms of living conditions and there was, therefore, no need to consider whether or not any harm could be satisfactorily mitigated.
10. The Council says that as the applicant did not take the opportunity to amend the proposal in that regard during the course of the application, despite being aware of the officer's concerns, and that as the application was being refused for an additional reason, it had to include all matters it found unacceptable.
11. I disagree because if the officer's report had considered whether there were any suitable conditions that might overcome its concerns, the need for a refusal on this matter may have been avoided as might the need for the applicant to address the matter of living conditions in her appeal.

Conclusion

12. For the reasons given above, I find that unreasonable behaviour, in substantive terms, resulting in unnecessary or wasted expense as described in the PPG has been demonstrated in regards to both grounds a) and b) 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 Stafford Borough Council shall pay to Mrs Alice Waters 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 applicants are now invited to submit to Stafford 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.

Sarah Colebourne

Inspector