

Costs Decision

Site visit made on 18 January 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Costs application in relation to Appeal Ref: APP/V1505/W/21/3289116 49 High Street, Wickford SS12 9AE

- 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 M&D Properties Investment Ltd for a full award of costs against Basildon Borough Council.
 - The appeal was against a refusal to grant approval required under Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the single storey upward extension to facilitate the provision of seven residential units.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. The PPG states that examples of unreasonable behaviour include failure to substantiate reasons for refusal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and acting contrary to national or local policy.
4. Although the application seeks full costs, the allegation of unreasonable behaviour focuses solely on the issue of natural daylight.
5. The applicant submits that the Council has acted unreasonably in that it refused permission without properly taking into account the conclusions of the submitted daylight assessment, and in its reference to the levels of outlook from proposed dwellings.
6. The Council refused the application on the basis that the proposed windows would face onto an inset balcony, thereby resulting in a harmful effect on the levels of natural light and outlook obtained by future occupiers. However, the supporting evidence clearly demonstrates that the levels of natural light would be satisfactory to all proposed dwellings, in accordance with recognised guidance.

7. In the planning judgement, it appears to me that having regard to the provisions of the GPDO, the development proposed should reasonably have been permitted insofar as it related to the provision of natural light to proposed dwellings. The Council made a qualitative assessment rather than relying on the submitted technical assessment. This, in my view, has resulted in the Council making inaccurate assertions about the proposal's impact in respect of natural light, which are unsupported by any objective analysis. The refusal of planning permission in this respect therefore constitutes unreasonable behaviour, contrary to the basic guidance in the National Planning Policy Framework and the PPG, and the appellant has been faced with the unnecessary expense of lodging the appeal in this regard.
8. Accordingly, I find that unreasonable behaviour resulting in unnecessary expense in submitting an appeal, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs, relating only to those costs incurred in contesting the second part of the Council's reason for refusal, which concerned alleged conflict with Class AB.2(1)(f) of the GPDO, is justified.

Costs Order

9. 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 Basildon Borough Council shall pay to M&D Properties Investment Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second part of the Council's reason for refusal, which concerned alleged conflict with Class AB.2(1)(f) of the GPDO; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. 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.

A. Price

INSPECTOR