
Costs Decision

Site visit made on 22 November 2022

by K L Robbie BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th February 2023

Costs application in relation to Appeal Ref: APP/N4720/D/22/3305955 115 Wensley Drive, Chapel Allerton, Leeds LS7 2LU

- 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 Michaela Bartlett for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for a wrap around ground floor extension, flat roof.
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Decision

1. The application for an award of costs is allowed in part, 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. Applications for costs may be made on procedural or substantive grounds. In this case the applicants have made a claim on both procedural and substantive grounds.
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'.

Procedural Matters - Lack of site visit and reliance on aerial imagery; Refusing to provide information or be more helpful.

4. The applicant indicates that the LPA acted unreasonably because the planning officer did not visit the site, which the supports. The LPA's reasons for this vary between the emails and the LPA's costs rebuttal. Reliance was placed on photographs supplied by the applicant at the request of the LPA, and from Google aerial imagery. I have been supplied with the photographs sent by the applicant to the LPA.
5. Of the photographs submitted to the LPA, only two show the rear of the house. None of the photographs properly reveal an accurate relationship of the proposal with the adjoining property at 117 Wensley Drive, other than to show the presence of a beech hedge along the boundary. However, I am not aware of any instructions or advice being offered by the LPA as to what the photographs should show, or that they would be relied upon in their decision

making. Whilst I agree that there is no legal requirement for an LPA to carry out a site visit, it is a reasonable expectation that the decision maker has adequate information upon which to base their decision. I do not consider the photographs supplied and Google imagery to provide that level of information in this instance.

6. Had the LPA officer visited the site or requested photographs which clearly showed the relationship with No. 117, the effect of the proposed extension on the living conditions of its occupiers would have been evident, considering the existing single storey extension on the rear of the appeal property. Furthermore, there is no acknowledgement in the officer report that the decision had been taken without undertaking a site visit. As a result, as set out in my decision on the planning appeal, the LPA refused a scheme which was clearly approvable and the lack of a site visit, in my opinion, was a significant contributor to the refusal. I therefore consider that the LPA has acted unreasonably in this respect.
7. The applicant has provided e-mails sent to the LPA following the refusal of the application, and claims that the LPA failed to respond or cooperate in respect of the issues raised. The appeal was submitted very shortly after the emails were sent. The LPA say that officers were either on sick leave or annual leave at the time and another officer to whom the emails were sent works in another team. Whilst the applicant could reasonably expect a reply even in the form of an acknowledgement as a matter of good customer service, the only recourse of action regarding this particular planning application for the applicant was to appeal the decision. Whilst it is regretful that the applicant did not receive good customer service at this point in time, an appeal was inevitable in the circumstances. I therefore do not consider that unreasonable behaviour has been demonstrated in this respect.

Substantive Matters –Vague assertions; Reliance on incorrect information;

8. The applicant indicates that the LPA have acted unreasonably because they incorrectly interpreted their Householder Design Guide (HDG). The guidance in the HDG with regard to single storey rear extensions in excess of 3 metres projection states that 'If the extension is stepped away from the boundary a greater projection may be permissible'. The planning officer put forward a rule of thumb of 1 metre of inset per metre of extension greater than 3 metres. However, this is not set out explicitly in the HDG. There is no policy basis for the level of inset quoted and therefore it cannot reasonably be applied as a hard and fast rule or as a starting point.
9. The LPA agree that the amount of separation required from a neighbouring boundary depends on the specific circumstances of an application site, because as they rightly point out, properties significantly vary across the city. However, no account appears to have been taken in this case with regard to either the length of the gardens, the topography or the existing rear extension at the appeal property. It therefore seems to me that the applicant had reasonably applied the guidelines set out in the HDG. Whilst I acknowledge that in some circumstances this degree of inset may not be acceptable, the LPA have failed to substantiate why the proposal does not mitigate their concerns regarding the living conditions of the occupiers of No.117.
10. The officer report states that "the new element is shown to be set 0.5m away from the common boundary". Nevertheless, an annotated plan had been

supplied during the course of the application showing the inset of the new element of extension to be 1.3m from the common boundary. The discrepancy is significant and is repeated twice in the text of the report. It does not give a true reflection of the situation on the ground or that which is proposed. The LPA suggest that the proposal raised significant amenity concerns in relation to the living conditions of the occupiers of No.117. It is not clear whether this assessment was based on the assumption that the inset from the boundary would be 0.5 metre or the correct distance of 1.3 metres. Regardless of the scale in the scale bar on the plans, it is clear from the drawings that the inset from the boundary is in excess of 0.5 metres. Furthermore, it is clear that the inset of the extension beyond that which is currently in existence would have a lesser impact on the living conditions of the occupiers of No.117 than that of the current rear projection.

11. Whilst I accept that an incorrect scale was used on a submitted plan, the LPA had been in possession of an annotated plan extract for around a month prior to making the decision, whether this was formally submitted as part of the application or not. I therefore find that the LPA has acted unreasonably in the determination of the planning application.

Conclusion

12. As a consequence of this unreasonable behaviour the applicant has incurred unnecessary expense in preparing the grounds of appeal. Had the planning application been determined on the basis of a site visit, reasonably applying the relevant guidance in the HDG and with accurate measurement in the officer report it is unlikely that the appeal would have been necessary.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified, in so far as the claim relates to the substantive grounds and the lack of site visit.

Costs Order

14. 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 Mrs Michaela Bartlett the costs of the appeal proceedings described in the heading in this decision, limited to the those cost relating to the substantive grounds and the lack of site visit; such costs to be assessed in the Senior Courts Costs Centre if not agreed.

KL Robbie

INSPECTOR