
Costs Decision

Site visit made on 28 March 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2023

Costs application in relation to Appeal Ref: APP/M4320/W/22/3310743 62 Trafalgar Road, Sefton, Birkdale PR8 2NL

- 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 Darren Rigby for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the 1no. demolition and erection of new-build dwelling.
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Decision

1. The application for an 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal. The applicant's cost claim is made on the basis of substantive matters, namely the reasons for refusal contained within the decision notice.
4. The applicant considers the Council's approach to assessing the design of the proposal to be subjective and without consultation with a design review panel. There is no evidence before me that the Council is unqualified to deal with matters of design, which is a standard consideration for planning applications. Undertaking a design review whilst advantageous in certain circumstances, is not compulsory. The Council clearly articulated its assessment of the proposal within the officer report. The art-deco features of nearby buildings namely the Round House and No 54 Waterloo Road were considered, but it was concluded that they did not form part of the character of Trafalgar Road within which the appeal site is situated. Having reviewed the evidence and based on my own observations during my visit, I have come to the same view. This does not amount to unreasonable behaviour but highlights the difference of opinion between the parties in respect of the design merits of the proposal.
5. I find no suggestion that the Council was seeking to replicate nearby designs that the applicant considers mediocre. Responding positively to the established character, local distinctiveness and form of its surroundings does not

necessarily mean repeating what has gone before but rather respecting the architectural cues that are present.

6. Whilst it would have been good customer service for the Council to discuss its concerns regarding the design of the proposed dwelling during the determination of the application, it is entitled to determine the proposal put to them. Even if it had raised its concerns, there is no evidence before me to indicate that the applicant would have been prepared to change the design, given their evident preference for an art deco style dwelling.
7. The 45° angle test, whilst not explicitly referenced in the New Housing Supplementary Planning Document 2018, it is nonetheless a useful indicator of the impact of new development on the living conditions of occupants of existing dwellings. Although such a test exists within the House Extensions Supplementary Planning Document 2018, there is no substantive evidence that it has been misapplied. The Council contends that the application of the test was advised in the pre-application enquiry response. Furthermore, the applicant has submitted a drawing showing the 45° angle test being breached¹ which in the absence of any substantive evidence to the contrary, appears to indicate an acceptance of the applicability of the test. I find no evidence that the Council behaved unreasonably in this regard.
8. The proposal was not refused on the grounds of loss of daylight or sunlight. Thus, I do not need to consider this matter further.

Conclusion

9. I acknowledge the applicant's frustration with their perception of the Council's approach. However, in this case unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not therefore justified.

M Clowes

INSPECTOR

¹ Drawing number 3254-4104-P-01.