



Costs Decision

Site visit made on 13 June 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Costs application in relation to Appeal A Ref: APP/W2465/X/22/3307936 22 Avoca Close, Leicester LE5 4RA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Muhammad Kharodia for a full award of costs against Leicester City Council.
 - The appeal was against the refusal of certificate of lawful use or development for a single storey extension at rear of dwellinghouse of dimensions: 6 metres beyond the rear wall of the original dwellinghouse; maximum height 4 metres; height of the eaves 3 metres (Class C3). Includes internal alterations.
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Costs application in relation to Appeal A Ref: APP/W2465/X/22/3307934 22 Avoca Close, Leicester LE5 4RA

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Muhammad Kharodia for a full award of costs against Leicester City Council.
 - The appeal was against an enforcement notice alleging the construction of two and single storey extension to the rear of the property.
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Costs application in relation to Appeal A Ref: APP/W2465/X/22/3307935 22 Avoca Close, Leicester LE5 4RA

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Ronika Kharodia for a full award of costs against Leicester City Council.
 - The appeal was against an enforcement notice alleging construction of two and single storey extension to the rear of the property.
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Decision

1. The applications for awards of costs in respect of all the appeals are refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises 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 reasons for issuing the enforcement notice (the Notice) as set out in the Notice are complete, precise, specific and relevant to the application. They also clearly state that the proposal would conflict with the relevant policy of the City of Leicester Local Plan 2006, Leicester City Council Residential Amenity Supplementary Planning Document 2008 (the SPD) and the National Planning Policy Framework. These reasons were adequately substantiated in the

Council's appeal statement of case, which demonstrates how the development is harmful to the living conditions of the occupants of 20 Avoca Close, with regard to outlook and daylight.

4. The Council assessed the proposal against the guidance in the SPD on rear extensions and found that it breached the 45 degree rule, which seeks to protect against undue loss of daylight and preserve a reasonable standard of outlook. Whilst the SPD is guidance only and there may be circumstances whereby development is acceptable, despite it being in breach of the 45 degree rule, the Council clearly considered there were no such circumstances in this instance. They were not unreasonable in doing so.
5. The letter in support of the development from the occupants of 20 Avoca Close is a material consideration. However, as I have set out in my decision, the assessment of the effects on the living conditions of the occupants of No 20 must have regard to existing and future occupants. An acceptable standard of living conditions must be maintained, even if a particular occupant is happy for them to be reduced.
6. With regard to the evidence submitted in support of the LDC and ground (c) appeals, there is nothing unreasonable about the Council considering the applicants' own evidence to support their case. As I similarly found the development to be unlawful, I do not find the Council behaved unreasonable in its consideration of the LDC application or the ground (c) appeals.
7. Prior to the notice being served, there appears to have been discussions held between the applicants and the Council about how to move forward. The applicant was given the opportunity to submit planning applications, which they did, and the Council waited until after the period for submitting an appeal against the refusal of these applications had passed before issuing the notice. Whilst this was clearly not the outcome desired by the applicants, which would no doubt have been able to retain the development as constructed. However, the Council did not behave unreasonably in refusing these applications.
8. The development that is the subject of the appeals has already been completed. Therefore, it is not possible for the Council to have unduly delayed or prevented development which should have been permitted.

Conclusion

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award for costs is therefore not justified.

Alexander Walker

INSPECTOR