



Costs Decision

Site visit made on 17 August 2023

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Costs application in relation to Appeal Ref: APP/D1590/D/23/3322204 530 Arterial Road, Leigh-on-Sea, SS9 4DT

- 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 Mike Peach for a full award of costs against Southend-on-Sea City Council.
 - The appeal was against the refusal of the council to grant planning permission for the erection of first floor rear extension, alter elevations (retrospective).
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Decision

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

Reasons

2. The Planning Practice Guidance 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.

The Application

3. The council described the harm relating from the appeal scheme as 'significantly out of keeping' and 'significantly harmful' yet it found the previous 2018 scheme to be 'suitably subservient', even though it was 0.65m greater in height than the appeal scheme and just 0.6m lesser in depth. The council seems to have overinflated the harm given the small variances between the schemes, especially as arguably the greater height of the approved development would be more harmful as it would be more visible from neighbouring dwellings than the increased depth would.
4. The Appellant therefore seeks an award for full costs in relation to this appeal in accordance with guidance contained within the PPG.

The Rebuttal

5. There has been no response from the council.

Conclusions

6. It appears that between the approval under application reference 18/02173 and the current appeal proposal, there was a refused application (ref. 21/02115/FULH). The officer's report notes that the development (subject to the current case) is the same as the development subject to that previous refused. The officer considered this to hold significant weight in the assessment

of the current proposal as it was determined within materially the same national and local planning policy context insofar as the material factors are concerned. The officer then found, consistent with that previous refusal, that the development, by reason of its *excessive depth* (emphasis added) and resultant scale and bulk, appears as a dominant and disproportionate addition that is significantly out of keeping with and harmful to the character and appearance of the existing dwelling and the wider area. I note that the resultant bulk and scale referred to is only as a result of the excessive depth: there is no other aspect of the proposal that the officer points to with regard to additional bulk and scale.

7. There is nothing in the officer's report on the appeal scheme that compares it with the previous approved scheme, or highlights that the increase in depth, is 0.6m. Therefore there is nothing which analyses how the extra depth materially leads to the objectionable bulk and scale when compared to the previous scheme that was found acceptable and given planning permission. There is no attempt to rationalise the judgement reached. It is to be expected that local planning authorities will be consistent in their decision making, and this is especially so when dealing with essentially the same development on the same site
8. The officer's report in this case did not fully consider the proposal, and did not explain the rational basis for the conclusion that led to the refusal reason. 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 full award of costs 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 Southend-on-Sea City Council shall pay to Mr Mike Peach, 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.
10. The applicant is now invited to submit to Southend-on-Sea City 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.

Terrence Kemmann-Lane

INSPECTOR