

Costs Decision

Site visit made on 24 January 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2024

Costs application in relation to Appeal Ref: APP/G3110/D/23/3317670 4 Stainfield Road, Oxford, Oxfordshire OX3 9DH

- 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 Kreshnik Pali for a full award of costs against Oxford City Council.
 - The appeal was against the refusal of planning permission for the erection of two storey side and rear extension, a single storey rear extension, five rooflights, hip to gable roof extension, rear roof dormer to facilitate a loft conversion, and associated internal and external works within the curtilage of a single family dwelling.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that parties in planning appeals are normally expected to meet their own expenses, irrespective of the outcome of the appeal. Costs may only be awarded against a party which has behaved unreasonably, in either a procedural or substantive way, and whose unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant is seeking a full award of costs on the basis of the lack of engagement from the Council, the delay in issuing the decision and unreasonable reasons for refusal. They consider that due to the number of reasons for refusal, which were not justified and applicable to the proposal, significant time was taken to address the unwarranted reasons for refusal.
4. There is limited evidence before me that the Council refused to engage with the applicant during the course of the application. The applicant makes reference to a number of phone calls with the Council which demonstrates that there was a degree of engagement between the parties. The appellant states that several emails were unanswered, which is unfortunate, however, I do not find that the Council refused to work proactively with the appellant to the extent which amounted to unreasonable behaviour.
5. A decision on the application was not made by the Council within the statutory time frame. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour at the time of the application can be taken into account. Nevertheless, although frustrating for the applicant, I do not consider that the delay in issuing the decision was sufficient to amount to unreasonable behaviour. The application was refused for 6 reasons, however this in itself, is not evidence of unreasonable behaviour.

6. The Council refused the application on the basis that it would be tantamount to an independent dwelling. The applicant considers that assumptions were made about the proposal being a separate dwelling even though the description of development referred to an extension and that planning permission would be required to use the proposal as a new dwelling.
7. Consideration as to whether the proposals would result in the creation of an independent dwelling required a planning judgement to be made on a site-specific basis, as a matter of fact and degree. Whilst I reached a different view to the Council on this matter, it was not unreasonable of the Council to take an opposing view. Although I did not agree with the Council on this issue, sufficiently robust evidence was put forward in the Officer's report to substantiate its position.
8. The reason for refusal regarding the lack of an energy statement was qualified to make it clear that it only applied if the proposal were to be a separate dwelling, therefore based on the Council's conclusions in this regard, this was not an unreasonable position to take.
9. Whilst I have found that the drawings contain sufficient detail to allow an assessment of the proposal, the inaccuracy of the scale bar on the drawings introduced a degree of ambiguity in relation to the measurements. I therefore do not consider that the Council was unreasonable in its contention that the plan was inadequate.
10. The reasons for refusal in relation to character and appearance and the living conditions of future occupiers were substantiated through an objective analysis of the proposal. Whilst I do not agree with the Council that the proposal would fail to provide acceptable accommodation, I do not find that this amounts to unreasonable behaviour.
11. In its consideration of the effect of the proposal on the living conditions of neighbouring occupiers, the Council did not expressly consider the fallback position of a potential single storey rear extension constructed under permitted development rights. This was mentioned in the Design and Access Statement submitted with the application, in emails to the Case Officer, and within the appeal statement, which included a diagram.
12. Whilst the weight to be afforded to a valid fallback position is a matter of planning judgement, the Council did not make any assessment in this regard in relation to the single storey rear extension. In failing to consider the fallback position the Council has acted unreasonably. However, there is no substantive evidence before me that addressing this point, over and above the other reasons for refusal, has resulted in additional expense to the applicant.
13. Whilst I find that unreasonable behaviour has occurred in respect of the lack of consideration of the fallback position, it has not resulted in unnecessary or wasted expense as described in PPG. Therefore, the application for an award of costs must fail.

E Pickernell

INSPECTOR