
Costs Decision

Site visit made on 20 April 2024

by Elaine Benson BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.05.2024

Costs application in relation to Appeal Ref: APP/Q4625/D/24/3338720 149 Marshall Lake Road, Shirley, Solihull B90 4RB

- 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 Liang He for a full award of costs against Solihull Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for single storey side and rear extension and first floor rear extension.
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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.
3. The applicant submits that the Council made an unfounded and unsupported decision to refuse the planning application. They strongly disagree with the assessment which led to the refusal, believing that the proposal for retrospective planning permission was the same as the approved scheme. The applicant states that the only difference between the two schemes was the placement of windows for the ground floor and first floor toilets. In their view the recommendation from the planning officer was for approval despite pressure from the planning committee to issue a refusal.
4. The applicant further states that the installation of secondary obscure glazed windows within side elevations are acceptable in planning terms and there are numerous instances where the Council has allowed them. The reasons for objecting to them in this instance is baffling. In their view the LPA has shown a lack of planning judgement and failed in its duty in determining this application pragmatically. The unnecessary wasted time and cost in addressing these issues has resulted in the need to seek full recovery of the costs associated with this appeal.
5. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include failure to produce evidence to substantiate each reason for refusal on appeal and not determining similar cases in a consistent manner.

6. A Planning Committee decision which goes against officer advice is not in itself a reason to give an award of costs, as the Committee is entitled to reach its own conclusions on the merits of the proposal. It is not unreasonable for a Committee to exercise planning judgement on matters such as character and impact on neighbouring properties, taking into account the particular circumstances of the case. However, no reasons to substantiate taking a decision contrary to professional officer advice were provided in the appeal.
7. The Council has not responded to the applicant's application for costs. It did not seek to substantiate its position regarding the application of its policies and its assessment of the effects of the constructed development on the character of the surrounding area and on the living conditions of neighbouring occupiers. Furthermore, it has not been demonstrated how the Council considered or compared the differences between the appeal proposal and the earlier planning permission for a similar development.
8. In the absence of any justification for its decision, I consider that the Council has relied on vague and generalised assertions which are unsupported by any objective analysis of the appeal proposal itself and the other material considerations. It did not determine similar cases on the same site in a consistent manner. As a result, a development that should have been permitted has been prevented. In accordance with the Planning Practice Guidance, this represents unreasonable behaviour.
9. 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

10. 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 Solihull Metropolitan Borough Council shall pay to Liang He, 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.
11. The applicant is now invited to submit to Solihull Metropolitan Borough 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.

Elaine Benson

INSPECTOR