



Costs Decision

Site visit made on 17 June 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2024

Costs application in relation to Appeal Ref: APP/D1590/W/23/3335699 995-1003 London Road, Leigh-on-Sea, Southend-on-Sea SS9 3LB

- 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 R Schofield for a full award of costs against Southend-on-Sea City Council.
 - The appeal was against the refusal of planning permission described as "erect two storey rear extension and form new second floor to the main building with roof terrace to form a further 4no. self contained flats with associated parking, bin and cycle storage".
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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 (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and that behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application is seeking to recover the full costs incurred in the appeal process. From the application, it is clear that the applicant considers that the Council behaved unreasonably as it did not determine cases in a consistent manner.
4. The applicant refers to an extant permission for the site (ref 22/01629/FUL) granted in 2022¹ and to the Council's Development Control Committee meeting on 13 September 2023 at which its members considered the proposed scheme.
5. I have not been provided with full details of the 2022 permission. However, the Council's Planning Officer's Report (the Report) sets out the main differences between the 2022 scheme and the appeal proposal which include changes to the unit numbers and sizes.
6. The first reason for refusal relates to the failure to provide any private amenity space for two of the proposed units. The Council's appeal statement indicates that the 2022 permission included useable amenity space for all proposed units. This contrasts with the appeal proposal which does not include any proposed amenity space for two of the proposed units.
7. As can be seen from my appeal decision, I agree that the proposal would harmfully fail to meet the external amenity space requirements for these units.

¹ Planning application ref: 22/01629/FUL – "the 2022 permission/scheme"

The appeal proposal clearly differs from the 2022 permission and therefore I do not find that the Council has been inconsistent or behaved unreasonably regarding the first reason for refusal.

8. The Council's second reason for refusal relates to the effect of the new third storey on the living conditions of the occupiers of No.10 Grasmear Avenue, by reason of its overbearing impact on their rear garden environment. The Report states that when the 2022 permission was granted, it was found that the development of near identical form and scale would have an acceptable impact on the residential amenity of neighbours in all relevant regards. It outlines that the proposed roof extension would add scale and bulk to the application building but would not be any greater in height, linear extent or depth northward than the 2022 permission.
9. However, despite this, the Council found that the scale, siting and degree of elevation of the new third storey relative to No.10 Grasmear Avenue would harm neighbouring living conditions. As my appeal decision shows, I do not agree with the Council in this respect. The Council has clearly been inconsistent in how it has dealt with this matter in the 2022 scheme and the appeal proposal. As such, the Council's behaviour has been unreasonable in respect of the second reason for refusal as the appellant has had to spend money on addressing this point through their appeal submissions. It thus follows that the applicant has incurred unnecessary expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial 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 Southend-on-Sea City Council shall pay to Mr R Schofield, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's second reason for refusal relating to the effect on neighbouring living conditions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

A Wright

INSPECTOR