



Costs Decision

Site visit made on 6 January 2025

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2025

Costs application in relation to Appeal Ref: APP/D1590/D/24/3350728

6 The Gables, Leigh-on-Sea, Essex SS9 4DU

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Ryan Hamilton for a full award of costs against Southend on Sea Borough Council.
 - The appeal was against the refusal of planning permission for a single storey rear extension .
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Decision

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

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. On two occasions ahead of the committee meeting the appellant advised the planning officer that the height of the extension is 3.16m and not 3.5m (3.56m as annotated on the plans) as set out on the submitted plans. A note to this effect was included in the supplementary report circulated ahead of the committee meeting held on 26 June 2024. Notwithstanding this, it is alleged that the Council members referred to the incorrect height during the course of discussion and votes by members. Without this influence it is suggested that members would likely to have been more inclined to grant planning permission noting the fact that there would be no substantial difference in the proposal plans and that other plans submitted that were confirmed did not require prior approval (a fallback position).
4. It is also considered that a particular ward Councillor should not have been participating in and influencing the discussion and voting at the committee meeting as he had spoken with the residents of No.5 The Gables and visited the property to make an assessment. It is contested that this would have affected his impartiality. Without this procedural unreasonableness the appeal may have been avoided.
5. Members did not give due weight to the fact there was a previous rear conservatory addition and trees along the common boundary that would have blocked sunlight and limited daylight to the side kitchen door at No.5 The Gables. Furthermore, the prior approval fallback was not considered. The obscure glazing within the door is a secondary source of light into a non-habitable room. The Council's Design and Townscape Guide Supplementary Planning Document (SPD) supports the

application position with respect to potential loss of light caused by extension. The appeal could have been avoided had these factors been considered.

6. Further to the above, a previous planning submission had been made to regularise the ground floor extension and erect a first storey extension. The proposal was refused on the basis of the combined impact of the extensions on the character and appearance of the site. It was not refused on the basis of harm to the living conditions of No.5 The Gables. Given that proposal was to regularise the single storey rear extension, it is not considered that members approached this appealed proposal in a consistent manner.
7. For these reason the applicant considers that the Council has acted unreasonably procedurally and substantively. As such, the applicant has incurred the unnecessary time and associated cost of the appeal process as the applicant has had to obtain professional assistance and submit an appeal.
8. The Council contends that the applicant did not provide further specific evidence, such as photographic evidence showing measurements on site, to support the revised height measurement. Furthermore, the applicant did not seek to amend the submitted plans or withdraw the application from the committee agenda. The planning application was therefore assessed on the basis of the submitted plans that annotated the height of the single storey rear extension to be 3.56m. Members had the benefit of this information within the officer report to committee, which also contained photographs of the extension as built and photographs demonstrating the relationship with neighbouring dwellings.
9. With regard to the conduct of a ward Councillor, that member declared a non-pecuniary interest at the start of the meeting. The Council's legal team were satisfied that the declaration of interest was appropriate and the meeting could proceed. The Council consider it carried out its responsibilities in assessing the application giving due weight to material considerations finding the development to be not policy compliant.
10. Plans showing the development and the site prior to the unauthorised extension being erected and photographs of the site were made available to members in the agenda and committee presentation. Members were aware of the circumstances on site prior to the erection of the extension and were able to take these into account in the decision-making process.
11. The Council contends that the committee report outlined the key issue and identified areas where judgement could be applied. Therefore, the Council is of the opinion that members, in applying their judgement, could come to a different conclusion on the individual merits of those considerations to that of its officers.
12. I am satisfied that members of the Council's Planning Committee had sufficient information before them to allow them to make a reasoned assessment of the proposal and its merits. It is open for the Councillors to make their own judgement on the evidence that is before them and come to a different conclusion to that of an officer. This is not a failure to exercise the development management functions properly. If there is concern, the Council has advised that the conduct of an elected member can be reported to the monitoring officer and this is a process separate to planning.

13. With regard to the potential false claims made by a ward Councillor who is said to have visited the site and measured the extension, the plans and officer report that were before members annotated the extension's height. The plans that accompanied the planning application were available to members and this is what was before members for consideration. Irrespective of the corrected measurement provided within the supplementary report circulated ahead of the committee meeting and whether the Councillors measurement was correct or not, the details pertaining to the proposal submission were not amended.
14. On the evidence before me there is no clear indication that members ignored or did not have regard to the guidance contained within the Design and Townscape Guide SPD regarding loss of light caused by extensions. Similarly, I do not find that any assessment made in respect of the previous applications were clearly ignored or disregarded.
15. With regard to pre-existing circumstances the existing trees could be removed without requiring any permission or approval. The pre-existing circumstances were set out in the officer report. It may be that members may have come to a different view on the proposal had the planning application been amended to reflect the re-measured height of the proposed rear extension, if that was indeed the proposal that was actually being sought planning permission. However, the plans were not revised and the height as set out within the supplementary report was not before members for consideration. The fact that I have come to a different view to the proposal to that of the committee members does not, of itself, show that the Council has behaved unreasonably.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nicola Davies

INSPECTOR