
Costs Decision

Site visit made on 12 August 2016

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 October 2016

Costs application in relation to Appeal Ref: APP/X5990/W/16/3144622 103 Eastbourne Mews, London W2 6LQ

- 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 Ms Caroline Beecham for a full award of costs against City of Westminster Council.
 - The appeal was against the refusal of grant subject to conditions of planning permission for extension and remodelling of mews property, including demolition of existing property, retention of front façade and party walls, and reconstruction with new storey at second floor level.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 046 of the Planning Practice Guidance states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
4. The appeal followed the refusal on 8 October 2015 of an application made on 27 March 2015 for the extension and remodelling of the property at 103 Eastbourne Mews. Two reasons for refusal were given, the first relating to the loss of an off-street parking space, and the second relating to the effect of the proposal on the living conditions of neighbours. My decision, which accompanies this costs decision, agreed with the Council in respect of parking provision, and dismissed the appeal on similar grounds. However, I have reached a different conclusion to the Council on the issue of living conditions.

Loss of garage space

5. In relation to the proposed removal of the existing integral garage, the appellant's case focuses on the usability of the garage, particularly in relation to the size of the garage door and the internal dimensions. The appellant alleges that the Council have failed to take into account the actual width of the opening, which they state to be 1.87 metres, and have thereby erroneously concluded that the garage is capable of being used as an off-street car parking
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space. As may be seen from my decision, I have accepted the appellant's measurement, but still found the garage to be usable, and its loss to be contrary to policy. Nonetheless, the Council have argued their position in some detail in respect of this issue, and therefore I conclude that they have not behaved unreasonably.

6. The appellant also makes reference to a telephone conversation with the Council's Highways Officer in respect of the garage issue. The appellant states that the officer made reference to unspecified appeal decisions which the appellant considers would have supported their proposal. The appellant alleges that, in failing to submit these appeal decisions in evidence, the Council have deliberately withheld evidence. However, appeal decisions are in the public domain, and it was open to the appellant to include within their evidence any appeal decision which they considered to be supportive of their case. There has been no unreasonable behaviour on the part of the Council in this regard.
7. Within their submissions, Council made reference to two specific planning appeals in support of their position. The appellant considers each of these decisions to be irrelevant. However, whilst the exact circumstances of these cases may differ from the present case, both the decisions deal the matter of car parking provision, and so are at least broadly relevant to the matter in hand. I therefore find no unreasonable behaviour on the part of the Council in relation to this aspect of their evidence.

Living conditions

8. Given the relative proximity of the properties to each other, I consider that the Council were entitled to take a cautious view on the issue of effect on living conditions. However, the officer's report offers little analysis to support their view that unacceptable disturbance from light spill or noise would occur. For example, it does not specify which properties at 103 or 105 Westbourne Terrace would be affected, or consider the position of habitable rooms in relation to the development.
9. Given the relatively small overall differences between the existing and proposed fenestration to the rear of the appeal site, much more detailed analysis would be expected in order to demonstrate that harm to living conditions would be so great as to warrant the withholding of planning permission. This is contrary to paragraph 049 of the Planning Practice Guidance states that the local planning authority will be liable to an award of costs where it fails to produce evidence to substantiate a reason for refusal, or where it makes vague, generalised or inaccurate assertions about the impact of the appeal proposal, which are unsupported by any objective analysis.
10. At the appeal stage, the Council introduced the concept of perceived overlooking. This did not feature as part of the reasons for refusal. I accept that the point is related to the issue of living conditions. However, the Council have not argued it convincingly. This is similarly contrary to paragraph 049.

Other matters

11. The Council confirm that they submitted their Questionnaire on 4 May 2016, whereas the due date for that document was given as 20 April 2016. Whilst regrettable, there is no evidence before me to suggest that the delay caused the appellant any unnecessary or wasted expense.

12. The appellant states that the Council failed to review their case promptly following the submission of the appeal. Councils are obliged to review their cases in the event of significant changes, for example, to the policies relied on in reaching the decision, or in the light of relevant appeal decisions or court cases which would have a direct bearing on the decision. There do not appear to be any such changes in this case. The fact that the Council have not changed their stance regarding the reasons for refusal does not amount to unreasonable behaviour.
13. The appellant contends that the Council have been inconsistent between the advice given prior to the submission of the planning application, and the outcome of that application. However, pre-application advice is given informally and cannot pre-determine the outcome of a subsequent application, which must take into account all material factors. Whilst acknowledging that this has been a source of frustration for the appellant, I do not consider that the Council have acted unreasonably in this respect.
14. I note also that the appellant feels aggrieved over a number of procedural matters on the part of the Council in relation to the handling of their case. However, these matters have no bearing on the present application.

Conclusion

15. I find that unreasonable behaviour by the Council, in failing to substantiate the second reason for refusal, has led to unnecessary and wasted expense, as described by the Planning Practice Guidance, and I therefore conclude that a partial award of costs is justified.

Costs Order

16. 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 City of Westminster Council shall pay to Ms Caroline Beecham 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, which concerned the effect of the proposal on the living conditions of neighbours.
17. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Elaine Gray

INSPECTOR