

Costs Decision

Site visit made on 27 September 2016

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 27 October 2016

Costs application in relation to Appeal Ref: APP/G5180/W/16/3153666 Chestnuts Royal, St Pauls Cray Road, Chislehurst, London BR7 6QB

- 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 the Council of the London Borough of Bromley for a full award of costs against Mr Brian McKeever.
 - The appeal was against the refusal of planning permission for change of Critall windows in the front of the property to double glazing making the windows to look alike with no design change.
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Decision

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

Reasons

2. Paragraph 030 of the Government's Planning Policy Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. Paragraph 053 of the PPG states that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. Examples of this may occur when:
 - the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
 - the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
 4. The policies relied on by the Council within its development plan do not state that proposals for UPVC windows in Conservation Area buildings will be rejected in all cases. Whilst ultimately I found that the proposal would not be in keeping with the development plan following an assessment of the site specific
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- circumstances of this case, it does not follow that the development would clearly (my emphasis) not have been in accordance with the development plan.
5. The appellant advanced arguments that similar materials to the ones proposed in this case were evident on buildings in the surrounding area and that different materials had been used in relation to previous alterations made to the front elevation of Chestnuts Royal. From the information gathered during my visit I was able to verify these points. It was not therefore the case that there was inadequate evidence to support these points. Whilst these considerations did not outweigh the conflict I found with the development plan policy they were nevertheless material considerations.
 6. In addition the appellant argued that the proposal would improve the thermal efficiency of the building. The energy efficiency of the building is a public benefit that I needed to take into account. For the reasons set out in my decision I found that this benefit did not outweigh the less than substantial harm to the Conservation Area. It was nevertheless something that I had to consider.
 7. With regards to the second ground for the claim, the Council has cited three previous unsuccessful planning applications regarding proposed changes to the window frames in the front elevation of various individual flats at Chestnuts Royal. Two of these cases were later dismissed following appeal. Whilst this is not disputed by the appellant, from the information before me the most recent previous appeal decision dates from 2010.
 8. To my mind the proposal in this case does not therefore follow a recent (my emphasis) unsuccessful appeal. Furthermore this proposal included a group of three flats, contrasting with the previous proposals which involved single flats. This meant that the relationship of the development to the front elevation of the building as a whole differed between the respective cases and it would have been necessary to consider each case on its individual merits. Therefore whilst I have found that the development would be unacceptable in this case, I do not consider that it is correct to conclude that the development involves the same or very similar development on the same or substantially the same site.
 9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR