

Costs Decision

Site visit made on 25 October 2016

by G M Garnham BA BPhil MRTPI

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

Decision date: 01 November 2016

Costs application in relation to Appeal Ref: APP/W5780/D/16/3156975 Land at 53 Bawdsey Avenue, Newbury Park, Ilford, IG2 7TN

- 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 & Mrs Shaikh for a full award of costs against London Borough of Redbridge Council.
 - The appeal was against the refusal of planning permission for 6 metre rear ground floor extension from original boundaries.
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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. One of the appellants' claims is that the Council has not been proactive or positive in its handling of their planning application, as expected by the National Planning Policy Framework. I have no reason not to accept the Council's response that considerable dialogue took place, during the course of which the Council explained its position, and gave the opportunity for the proposal to be amended or withdrawn.
4. I find that the Council has presented only limited evidence in support of its finding of "significant harm to neighbouring amenity and the character of the dwelling". There is no sign in the officer report that account was taken of existing extensions either side of the appeal site, despite them being shown on the Proposed Block Plan drawing (paragraphs 5 & 6 of my appeal decision). Moreover, the Council has not sought to rebut the appellants' allegation that no site visit took place. If it had, it should have been the case that the context would have been more fully appreciated.
5. The Council did give detailed consideration to the existence of a fall-back scheme (paragraph 13 of my appeal decision). It concluded that it was not certain, or near certain, that such a scheme would be implemented. I have been unable to reach a firm conclusion on this matter (paragraph 14, *op cit*). In my view, the mere existence of permitted development rights to a 6 metre rear

extension is an important material consideration, regardless of the reality of a fall-back position. In addition, the Council has not disputed the likelihood that, if the first floor 'bay' (or projection) was to be removed in order to enable the extension to proceed as permitted development, it would be unlikely to refuse planning permission for its reinstatement. I consider it to be unreasonable to resist an outcome that it is likely could be achieved legitimately by other means, but only at a not inconsiderable expense and inconvenience to the appellants.

6. I conclude that, in failing to have due regard both to the need for substantive evidence to support its reason for refusal and to the implications of rights to permitted development, the Council unreasonably withheld planning permission, resulting in the need for an appeal to be made that could otherwise have been avoided.
7. 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

8. 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 London Borough of Redbridge Council shall pay to Mr & Mrs Shaikh, 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.
9. The applicant is now invited to submit to London Borough of Redbridge 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.

G Garnham

INSPECTOR