



Costs Decision

Site visit made on 25 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 1 November 2016

Costs Application in relation to Appeal Ref: APP/H5390/X/16/3145598 45 Gastein Road, London W68LT

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Sanjeev Verma against the London Borough of Hammersmith and Fulham.
 - The appeal was against refusal of a Lawful Development Certificate relating to the erection of a rear extension at second floor level, on top of the existing back addition.
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Decision

1. The application for a full award of costs is allowed. See formal decision and Costs Order below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. In support of the application for costs it is indicated the LDC application was wrongly assessed on the basis of a planning application submitted at the same time. It is stressed that the application should have been assessed on its own merits at the time of the application. An almost identical application for a LDC was submitted nearby and this was approved. The Council has been inconsistent and unreasonable and as a result the appellant has had to delay construction and fund this appeal.
4. It is also contended that the Council has misunderstood the application for costs which was not made because of a grievance in the outcome, but has been made on the basis that the Council was unreasonable in making the decision in the first instance. The Council's original report confirmed that all elements of the submitted evidence accorded with the GPDO including the roof volume falling below the 40m³ figure. The Council then acted unreasonably by adding information which fell outside of a LDC application and the GPDO requirements.
5. In response the Council disputes that it has acted unreasonably on the basis that the decision is not agreed to. The Council contends that the decision has been assessed under the relevant criteria of Class B1, Part 1, Schedule 2, Article 3 of the GPDO. The application was not considered to be acceptable for the reasons set out in the officer's report. The Council stresses that the onus is on an applicant to prove that the development is lawful; the Council does not accept that it is and issued its decision within the required 8 week period.

6. Having considered the full submissions of this costs application and taking into account my findings in the appeal against the refusal of the LDC, I agree with the appellant that the Council has acted unreasonably. The Council should have assessed the application on what had been submitted, at the time it was submitted and purely against the requirements of the GPDO.
7. It was unreasonable of the Council not to have granted a LDC. Irrespective of whether or not there was another application in progress at the time of the application, the Council should not have looked beyond the details of the LDC application and the application of the GPDO criteria. I have concluded that the proposed development was lawful at the time of the application yet the Council seemed to think that the application which it later approved was relevant to their consideration of the LDC application. This was a mistake and the planning approval should have had no bearing on the Council's decision relating to the whether or not what was applied for was lawful at the time of the application.
8. Having found that the Council was unreasonable in its actions relating to the manner in which the LDC application was assessed, it is my view that there should have been no need for the appellant to appeal such an unreasonable decision. The Council's stance was misconceived as well as being unreasonable. The unreasonable behaviour led to unnecessary loss and expense for the appellant in the appeal process. If the Council had acted correctly in accordance with the LDC application a certificate would have been issued. It follows that a full award of costs is justified and the costs order is set out below.

Decision and Costs Order

I allow the application for costs in full and, in exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to The Town and Country Planning Act 1990 and all other powers enabling me in this behalf, I order the London Borough of Hammersmith and Fulham to pay to Mr Sanjeev Verma the full costs of the appeal proceedings relating to this appeal.

The costs are to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned the appeal described above.

Mr Sanjeev Verma is now invited to submit to the Council of the London Borough of Hammersmith and Fulham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. The enclosed guidance note describes how to apply for a detailed assessment by the Supreme Court Costs Office if the parties cannot agree the amounts.

Anthony J Wharton

Inspector