
Costs Decision

Site visit made on 11 October 2016

by **Andrew Owen BA(Hons) MA MRTPI**

Decision date: 02 November 2016

Costs application in relation to Appeal Ref: APP/H5390/D/16/3155610 124 Hurlingham Road, London SW6 3NF

- 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 Jerry Lee for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of planning permission for excavation of front garden and part of rear garden to form lightwells in connection with the enlargement of the existing basement without complying with a condition attached to planning permission Ref 2013/03052/FUL.
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Decision

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

Reasons

2. Planning Policy 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 4. The applicant had not seen a copy of the officer's report by the time they submitted the appeal and they suggest that if they had, they may have been able to submit a revised planning application to address the Council's concerns. The reason for refusal on the Council's decision letter makes it clear that it was the design and extent of the front lightwell that they objected to, and I consider this provided sufficient detail to the applicant to enable them to decide whether to proceed with an appeal or a revised application. Also the decision letter implies the works to the rear of the site were acceptable. However this does not mean consent was granted for these works and therefore it would still have been necessary to make a further submission, such as the appeal, to achieve planning permission for them. Therefore I consider the submission of the appeal was not unnecessary and did not arise as a result of unreasonable behaviour by the Council.
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5. Furthermore the cost of preparing the applicant's statement of case, and the accompanying basic drawing showing the other lightwells in proximity of the site, appear to be the only expenses incurred by the applicant and were reasonably necessary to explain their case.
6. Regarding the concerns in respect to the officer's site visit, it is apparent that the front lightwell can easily be seen from the public highway, and it would not have been essential for the officer to enter the site to assess this part of the proposal. In light of this, the Council's decision to refuse planning permission for the reasons stated is reasonable, notwithstanding the fact I have come to a different view on the merits of the case.
7. The Council were late in providing evidence to support their case and have displayed a degree of lack of co-operation throughout the determination of the application. However, in this case, I do not consider this has led to any unnecessary expense on behalf of the applicant. In particular, as the appeal was a householder appeal, no opportunity is provided for either party to comment on the other's case and so the applicant was not prejudiced by the Council's late submission.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and consequently the application for an award of costs is refused.

Andrew Owen

INSPECTOR