

Costs Decision

Site visit made on 16 November 2016

by Penelope Metcalfe BA(Hons) MSc DipUP DipDBE MRTPI IHBC

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

Decision date: 29 November 2016

Costs application in relation to Appeal Ref: APP/F5540/D/16/3159520 74 Dukes Avenue, Chiswick, London, W4 2AF

- 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 Marhab Abunayla for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was made against the refusal of planning permission for extension at basement floor with new lightwell and new dormer on side elevation.
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Decision

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

Reasons

Submission for Mr Marhab Abunayla

2. The application is made for a full award of costs. The appellant argues that the Council has behaved unreasonably by preventing or delaying a development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations. The application was recommended for approval by Officers on two occasions on the basis of previous history, decisions relating to similar cases and its accordance with development plan policies.
3. The appellant also argues that the Council has made vague, generalised or inaccurate assertions about the proposal's impact which are not supported by objective analysis or by the policies cited in the decision, that planning permission was refused on grounds which could have been dealt with by conditions, and that it acted contrary to well-established case law, and in a manner inconsistent with similar cases allowed on appeal.

Submission for the Council of the London Borough of Hounslow

4. The Council contends that it has not acted unreasonably in its assessment of the impact of the development on the character and appearance of the area and harm to neighbouring amenity, having particular regard to scale and location. The policies cited in the reasons for refusal support the decision in respect of these matters.

Conclusions

5. 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.
6. I have found the development acceptable and allowed the appeal. Planning Authorities are not bound to accept the recommendations of officers but must show reasonable planning grounds for taking a contrary position. Reasons for refusal should be fully substantiated and not based on vague, generalised or inaccurate assertions and should be supported by objective analysis. The Council considered the application having regard to adopted development plan policy aimed at protecting the character and appearance of the area and avoiding harm to the amenity of neighbours.
7. I consider that the Council's first reason for refusal is adequately supported by local plan policies CC1 and CC2 insofar as they expect development to respond sensitively to the character of the area and avoid poor quality design. The Council also relied on criteria in local plan policy SC7 to support its decision on the basis that the size of the proposed basement was such that it would not be subservient to the main house and that the lightwell would harm the character and appearance of the site and harm neighbours' amenity.
8. These matters are matters of judgement and are a legitimate concern of the Council. On that basis, I find that the broad aims contained in policies CC1 and CC2 and the more specific criteria in policy SC7 to protect the character and appearance of areas and neighbours' amenity support the Council's reason for refusal in general terms.
9. On the other hand, I find that the Council's second reason for refusal is not adequately supported by the development plan policies cited. It is concerned solely with the impact of the proposal during the period of construction works, whereas the policies are concerned with the long term effect of completed development. The works would be temporary and their impact could be mitigated by the use of relevant conditions.
10. It also appears to me that the Council failed to take proper account of the several examples of proposals for basements and lightwells within the Borough, either as established in case law in recent appeals or as approved by the Council itself.
11. In conclusion, I find that the Council had legitimate concerns regarding the impact of the proposal on the character and appearance of the area, and that these are adequately supported by the development plan policies set out in the first reason for refusal. However, I am not satisfied that the second reason for refusal is justified with regard to whether the proposed development would be in accordance with the local plan. I also find that the Council did not take proper account of the possibility of imposing conditions or of the other, similar cases in the area.
12. 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 partial award of costs is justified in respect of (a) the second reason for refusal, because conditions could have been used to allow the

development to go ahead and (b) my finding that the Council did not follow case law.

Costs Order

13. 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 the Council of the London Borough of Hounslow shall pay to Mr Marhab Abunayla, the costs of the appeal proceedings, limited to those costs incurred in preparing his case in respect of the Council's refusal to use conditions which would have allowed the development to go ahead and its failure to follow case law; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
14. The applicant is now invited to submit to the Council of the London Borough of Hounslow, 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.

PAG Metcalfe

INSPECTOR