
Costs Decision

Site visit made on 1 November 2016

by R J Perrins MA MCMI Arbor TechArborA

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

Decision date: 05 January 2017

Costs application in relation to Appeal Ref: APP/L5810/W/3141150 80/82 St Margarets Grove, Twickenham TW11 1JG

- 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 Susan Brookes and Paul Connolly for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of planning permission for a joint application for rear extensions.
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Decision

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

Preliminary matter

2. The planning appeal subject of this costs application runs at the same time as two others¹. Those appeals have been made against the Council's serving of an enforcement notice to secure removal of the extension built at No 82 and an application from the owners of No 80 to build a single storey extension mirroring that at No 82 and using the party wall as built. In effect resulting in the same development as proposed here. All three appeals have costs applications made by the appellant(s).
3. It is inevitable, given the close association of the appeals and appellants, the representations therein and the same agent being used for all appeals, that some aspects of the costs claims are similar. Nevertheless for the purposes of clarity I have dealt with each claim separately.

Reasons

4. Paragraph 030 of the Planning Practice Guidance 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.
5. The appellant sets out in some detail that it was unreasonable for the Council to seek assurances that the development would be built by way of a legal agreement. The application was made by both neighbours and should be considered as one and the agreement is not necessary in planning terms.

¹ APP/L5810/C/3144115 & APP/L5810/W/16/3148616

6. However, I disagree, it seems to me the Council were right in seeking assurances that the development would be built out and a legal agreement would be, to my mind, a suitable mechanism for achieving that purpose. In addition they had good reason to do so. There is some merit in the argument that this joint development should be looked at as a whole in the usual way, and if permission was granted it would be built in accordance with that permission. However, it is somewhat misguided in these circumstances; I say that given the unauthorised extension at No 82 has already been built.
7. Moreover, as set out in my appeal decision, the nub of this case is the impact of that unauthorised extension on the living conditions of occupiers of No 80 which the Council were duty bound to consider. Whilst I have not found the unauthorised extension to be unacceptably harmful to living conditions, such matters are subjective and the Council were entitled to come to the view they have.
8. Therefore, and regardless of permitted development rights, fallback positions and timing, the Council were simply seeking assurances that the living conditions of occupiers of No 80 would be protected. Without absolute assurances that the development would be built in its entirety a legal agreement was not an unreasonable approach. I do not accept that could have been secured by way of a condition seeking the commencement of one half of the development, after the development as a whole has purported to have been started.
9. Furthermore the approach was not unreasonable given the advice in the Planning Practice Guidance concerning the use of conditions requiring developments to be carried out in their entirety.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Richard Perrins

Inspector