
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/C/3144115 82 St Margarets Grove, Twickenham TW11 1JG

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Susan Brookes for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against an enforcement notice alleging without planning permission the erection of side/rear ground floor extension on the Land.
-

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 refusal for permission of a joint application, from the owners of both Nos 80 and 82, for a single storey extension spanning the width of both properties and incorporating that built, and a separate 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. 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 a detailed analysis of the discussions that have taken place with the Council and the appellant's neighbours regarding the extension as built. There is no dispute the extension was agreed between the neighbours and that permitted development rights exist at No 80 or that the additional height of the extension only has an impact upon those living at No 80.

¹ APP/L5810/W/15/3141150 & APP/L5810/W/16/3148616

6. In addition I accept that the neighbours at No 80 may not have been able to pursue their extension because of personal circumstances and both parties have done their utmost to resolve the situation. Further, the Council set out that joint extensions would be acceptable in their entirety and consider that could be secured by way of legal agreement which the appellant considers was a disproportionate approach.
7. Given all of that, I have some sympathy with the appellant and understand why all those involved have become somewhat frustrated by the process. However, what has been built does not have planning permission and the Council is duty bound, as am I, to assess developments in terms of the impact upon the living conditions of occupiers of adjoining properties and against the development plan. That is not only consideration of those who currently occupy premises but all future occupiers as well.
8. To that end I also have some sympathy with the Council; in their view the additional height of the unauthorised extension has had an unacceptable impact upon living conditions. That is a subjective matter and is a view which they are entitled to come to. In addition I accept that, although the evidence suggests an extension at No 80 would be forthcoming, there were no guarantees that an extension would be built. In that light the Council, in seeking a section 106 agreement, were looking for assurances that a development would ultimately be built that, in their view, would be acceptable and in accordance with the development plan.
9. That 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. For these reasons, I do not consider the Council, in using their discretion to take enforcement action against the unauthorised development, were disproportionate in their approach.
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