

Costs Decision

Site visit made on 15 February 2017

by John Whalley

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

Decision date: 28 February 2017

Application relating to Lawful Development Certificate application: appeal ref: APP/M5450/X/16/3155693; 16 Avenue Road, Pinner HA5 3HA

- The application was made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application was made by the London Borough of Harrow Council.
- The site inspection was in connection with an appeal made by Mr and Mrs B Leaver against the refusal of the London Borough of Harrow Council to refuse to grant a Certificate of Lawful Development.

Summary of decision: No award of costs is made

Submissions made by the London Borough of Harrow Council

1. The Council sought a full award of costs against the Appellants, Mr and Mrs Leaver, in relation to their application for a Certificate of Lawful Development for the proposed erection of a single storey rear extension; infill extension between two dormers; installation of three rooflights to side roof slope; external alterations at No. 16 Avenue Road, Pinner.
2. The original application for an LDC contained contradictory and unclear information. The application was made for No. 16 Avenue Road only, however the submitted drawing detailed joint development with the attached property, No. 14 Avenue Road. The description of the development did not include materially significant elements of the proposed works as shown on the drawings. The Appellants' agent was contacted to request amendments to correct discrepancies and clarify the details of the proposed development. However, a disagreement arose with regard to the nature and extent of development indicated around carport area, in particular whether it could be considered to constitute an extension. The opportunity given to provide amended or corrected forms and or drawings was declined. Consequently, the application was refused on the basis that insufficient information was provided for the Council to make a binding decision on the lawfulness of the proposal. That was in accordance with Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, which states that an application needs to describe precisely what is being applied for and the land to which the application relates. Without precise information, a local authority may be justified in refusing a certificate.
3. The claim for costs was made on the basis that there had been contradictions and discrepancies in the submitted information. The proposal could not be considered to accord with Article 39. The appeal had no reasonable prospect

of succeeding. Rather than putting in a revised application, the Appellants' actions led the Council to incur unnecessary work and wasted time responding to the appeal and preparing relevant documents. Consequently, unnecessary costs were incurred in defending the appeal.

Response by Mr and Mrs Leaver

4. The Applicants' Agents had done everything within their power to assist the Council in coming to a decision on the application. They had not frustrated the application process. They had provided whatever had been requested. Comprehensive information had been submitted. The Applicants had deferred to the Council when they initially proposed a change to the application description. Had the Council requested a second change, which they did not, the Applicants would have had no reason not to accept the change as they did on the first occasion.

Considerations

5. I have considered this application for costs in the light of the Department for Communities and Local Government, (DCLG), Planning Practice Guidance, (PPG), 6 March 2014 and all the relevant circumstances. In relation to Appeals – The Award of Costs – General; paragraph 030 of the Guidance says: *"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."*
6. Para. 029 of the PPG says: "Parties in planning appeals and other planning proceedings normally meet their own expenses. The aim of the costs regime is to:
 - *encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case."*
7. The Council made much of what they considered to be the inadequacy of the description of the proposed development in the original application. The Appellants agreed to an amended description. An amended description of the project was incorporated in the formal decision on the application.
8. I consider that the submitted plans showed the existing dwelling and the proposed alternations in suitable detail. They should have been adequate for the Council to come to a decision as to whether the proposed works were permitted by the General Permitted Development Order.
9. The 2015 Development Management Procedure Order at Part 1. Article 39, says: —"*(1) An application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development)(12) must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matters in question in accordance with those sections, include the particulars specified or referred to in the form. (2) An application to which paragraph (1) applies must be accompanied by — (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;...*". In effect, all that says is that the application should be clear as to what is proposed or may have become lawful. The fact that the description of the project was scant did not imply disqualification. One revision was agreed,

at least in part. A further revision could have been agreed or even imposed, describing in more exacting detail, if considered necessary, what the plans showed. In fact, the plans submitted with the application in this case were detailed and comprehensive. A full description of each part of the project was not essential. But as the Council took the view that such a comprehensive description was crucial, their formal decision should have been postponed until the matter was settled. As it was, the Appellants received a decision that provided them with no useful answer on any part of their application proposals.

10. There was also some unjustified confusion about possible inclusion of some work to No. 14. It is hard to see why the Council may have thought any work beyond the curtilage of No. 16 could have formed part of the LDC application.
11. It is unclear as to how the Council came to the view that they had incurred unreasonable costs as a result of the Appellants' actions. The problems that arose seemed to be more their doing than those of the Appellants. In my view, the Appellants did not behave unreasonably. They did not act in a manner that led the Council to incur unnecessary or wasted expense in the appeal process. No award of costs is made against the Appellants.

Conclusion

12. Unreasonable behaviour by Mr and Mrs B Leaver resulting in the London Borough of Harrow Council incurring unnecessary expense, as described in paras. 046 to 049 in the section headed Appeals – The Award of Costs – National Planning Policy Framework; Planning Practice Guidance, was not shown in relation to their application for a Certificate of Lawful Development in respect of the proposed erection of a single storey rear extension; infill extension between two dormers; installation of three rooflights to side roof slope; external alterations at No. 16 Avenue Road, Pinner HA5 3HA.

COSTS ORDER

13. No order as to costs is made.

John Whalley

INSPECTOR