
Costs Decision

Site visit made on 20 February 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 03 March 2017

Costs application in relation to Appeal Ref: APP/A5270/W/16/3153483 15 Bedford Park Mansions, The Orchard, Chiswick, Ealing W4 1JY

- 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 Andrew Walmsley for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the refusal of planning permission for roof extensions to front, rear and side roofslopes; provision of rear roof terrace with associated balustrades and access doors from loft room.
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Decision

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

Procedural matter

2. In the summary details above the nature of the appeal and the description of the proposed development are described as they are for the reasons set out in the procedural paragraphs of the appeal decision.

Reasons

3. 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.
 4. The application for a full award of costs was made in a supplementary statement dated 8 November 2016. The Council's response was dated 14 December 2016. The applicant's final response was dated 20 December 2016.
 5. As I understand the application, it falls into two parts. The first lists six aspects of the Council's handling of the application and the issue of the decision which the applicant considers has given rise to a procedural failing. Detailed evidence to support this is provided by the applicant. The Council has responded to each of the points made with evidence of its own.
 6. The second part contends that the decision was based upon vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis. In this regard, the applicant contends that the case officer did not actually visit the site. In response to this the Council says '*The Council's decision was made on valid planning grounds. The officer's report detailing findings and planning consideration provide sufficient evidence to substantiate the decision taken, which was not unreasonable.*'
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7. The Planning Practice Guidance says that costs cannot be claimed for the period during the determination of the planning application. It does however confirm that behaviour and actions taken at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
8. In respect of the first part of the application, the Council accepts that some administrative errors were made. These may have caused some delay. However, in my opinion the most serious issue affecting the determination of the application was the fact that both the initial case officer and the next officer to whom the case was assigned both left the Council before the application was determined. That is clearly unfortunate and a cause of frustration for the applicant but it cannot be held to be unreasonable behaviour on the part of the Council.
9. In any event, the applicant sought to take the matter out of the Council's hands by submitting an appeal on 30 June 2016. The initial documentation was however defective in a number of ways which were brought to Mr Walmsley's attention in a letter from the Planning Inspectorate dated 13 July 2016. The Council's eventual decision notice is dated 11 July 2016 and thus post-dates the appeal but pre-dates it being accepted as valid; the Council thus retained jurisdiction at that point. As I understand it, had the Council's decision been to approve the planning application there would have been no necessity to pursue the appeal and the costs of doing so would have been avoided.
10. The focus therefore shifts to the Council's decision and whether or not that was substantiated by the evidence. This forms the second part of the application.
11. My understanding of the Council's response is that the determining case officer did not in fact visit the site. Rather she relied upon a report of the discussions held and analysis undertaken by the initial case officer and the line manager following a site visit on 13 January 2016 and her own local knowledge of the Bedford Park Conservation Area, the design guidance pertaining to it and the planning history of the adjacent properties.
12. Where the whole case turns on an appreciation of the effect of the development proposed on the character and appearance of the Conservation Area it seems surprising to me that the responsible officer should not consider it necessary to visit the site. I do however acknowledge that the delegated report was checked and cleared by the line manager with whom the initial case officer had discussions. However, all the evidence points to the fact that the line manager had not visited the site either.
13. The Council did not submit an appeal statement and relies, which it is perfectly entitled to do, on the officer delegated report. There are three paragraphs which explain why the application was refused. Throughout, character and appearance are considered as one. That is not a correct application of the statutory test which requires them to be assessed separately since they are different concepts in heritage matters.
14. The first paragraph draws out the similarities with the approved scheme at Flat No 7 and states that the proposal is *'...not considered to detract from the architectural qualities of the host property'*. The next sentence then says *'However, the proposed rear roof extension given the size, scale and*

appearance is not considered to be a subordinate feature thereby detracting from the character and appearance of the host property and the roofscape of the area and thereby would fail to preserve and enhance this part of the Bedford Park Conservation Area.' Setting aside whether these two statements are consistent with one another, it appears to be the fact that the Council considers the development not to be subordinate that is determinative.

15. Whether or not it would be subordinate is a matter of judgement. That judgement would be difficult to make without seeing the site. However, from the second and third paragraphs it appears to be accepted in any event that the development would not be visible from the street scene. It is difficult to understand how something that will not be seen can have an effect upon the appearance of the Conservation Area.
16. There is no explicit analysis of the character of the Conservation Area as a whole, the character sub area within which the appeal property lies or the contribution that the appeal property, or more particularly its high-level roof, makes to that character or any assessment of the effect of the development proposed. It is simply stated in the third paragraph that *'...full size roof extensions are considered to not be characteristic of Bedford Park Conservation Area and contrary to policy; design guidance and design objectives for the Conservation Area.'* That is tantamount to an 'in principle' policy objection rather than an objective analysis of the effect of the particular proposal.
17. Vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis is given as one of the examples of the type of behaviour that may give rise to an award against a local planning authority. In my view the Council's decision is not based on an objective analysis of its effect. Although an award of costs is not determined by the outcome of the appeal, I consider that had such an assessment been carried out, planning permission would have been granted. The appeal was therefore unnecessary and the expense of pursuing it wasted.
18. 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 full award of costs is justified.

Costs Order

19. 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 Ealing shall pay to Mr Andrew Walmsley, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Brian Cook

Inspector