

Costs Decision

Site visit made on 20 February 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 6th March 2017

Costs application in relation to Appeal Ref: APP/U5930/D/16/3166162 19 York Road, Chingford, London, E4 8QN

- 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 Ismail Sari for a full award of costs against Waltham Forest Council.
 - The appeal was made against the refusal of planning permission for a single storey rear extension and two storey side extension.
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Decision

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

Reasons

2. *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. It is alleged that the Council acted unreasonably by not acting proactively and by refusing a proposal that was consistent with their policies and guidance. The Council have not responded to this application for costs.
 3. The Council's specific concern with regard to the proposal is set out in the conclusion of their delegated report. It is that the double storey side extension, due to its incongruous design, bulk and height, represents an insubordinate feature that would negatively impact upon the character and appearance of the host dwelling and would visually detract from the surrounding area. The reason for refusal includes the single storey element as part of the concern, despite the conclusion.
 4. The Council describes in the preceding paragraphs that with regard to the size of the extension and the prominence of the corner site, the extension would sit awkwardly in the street scene and the two storey element would appear visually dominant in relation to the host property. It goes on to describe that it would not be set back sufficiently from the front elevation at ground floor level at 0.5m or at first floor level at 1m. Because of this, it is suggested that the proposal would have a detrimental impact on the street scene and would not appear subordinate to the original property. It would detract from the host property, be unduly intrusive and would have a discordant impact on the street scene and character on the area.
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5. The design of the two storey extension would follow the form of the main dwelling, with a matching roof pitch and gable. I am entirely unclear how such a design could be considered to be incongruous. It would actually reflect the design of the dwelling. In this respect, I find the Council's finding to be perverse.
6. With regard to scale, the ridge height would be clearly lower than the main ridge and the front elevation would be set back a metre from the front of the property. It would have a width in the region of a third of that of the main dwelling. It would be viewed as a separate and distinctly smaller element when compared to the dwelling. It would undoubtedly be subordinate. I accept that whether it is subordinate enough is a matter of judgement but the Council's conclusion with regard to its relationship to the dwelling is flawed.
7. Whether the proposal would detract from the host dwelling and the character of the area is a subjective matter. However, given the smaller scale and matching design, together with the space around the extension, which lies in an area of terraced properties that are built close to the boundaries on corner plots, I find no support for the Council's view and I have found the reasoning provided by them to be of little assistance in understanding their conclusion.
8. I have found that the proposal would satisfy the design objectives of the development plan. I accept that to some extent, this is a subjective assessment given the generality of the policy requirements, particularly Policy DM29 of the Waltham Forest Local Plan Development Management Policies 2013 (LP) and Policy CS15 of the Waltham Forest Local Plan Core Strategy 2012. The requirements of LP Policy DM4 are more specific and require that developments relate to the host building, respects the street scene and the character of the area. The Council's evidence does not adequately demonstrate conflict with these requirements. The policies are consistent with the design requirements of the *National Planning Policy Framework*.
9. The Council have a Residential Extensions and Alterations Supplementary Planning Document 2010 (SPD). They have included two quotes from within it in their assessment although these are actually sentences from separate sections that have been linked. The sentence 'It is generally inappropriate to square the property off' is taken entirely out of context as it relates to rear extensions and the infilling between terraced properties.
10. The SPD requires that extensions should complement the size, shape and character of the property and should generally be subordinate to it; should fit into the general street scene by respecting the size and shape of adjacent and nearby buildings; and due to their prominence in the street, side extensions must be sympathetically designed and their scale carefully considered. These are subjective requirements but are supported by more detailed advice. That is, that as a general rule, a side extension should be subordinate to the main part of the house and set back from the main building line by 1 metre.
11. The proposal would meet the numeric requirement yet this distance is described as not being sufficient by the Council. The SPD does indicate that there may be exceptions to this but no justification has been put forward. The side extensions depicted in the guidance are of similar or greater scale. The main image includes an extension with a ground floor element that appears

flush with the frontage of the house. There is nothing in the SPD that would suggest that the scale of the extension proposed would not be subordinate or would be overly large.

12. The SPD explains that to ensure that a side extension does not detrimentally affect the street scene, the design of the roof, windows and doors should be in keeping with the original house and those of neighbouring properties. Materials should complement or match those of the original house. There is no dispute that the proposal would satisfy these requirements.
13. Overall, although design elements and scale require subjective judgements, this extension is clearly subordinate. I have been provided with no indication from the Council as to why they do not find it to be subordinate or any explanation as to why the numeric requirements of the SPD, with regard to setting the frontage back, need to be exceeded. The description of the extension as being incongruous, when it follows the form and detail of the house, is inexplicable.
14. I consider that by any reasonable assessment, the proposal satisfies the Council's policies and the SPD requirements. The evidence from the Council is insufficiently detailed or persuasive to suggest that an alternative view could reasonably be reached. I agree that the decision and the delegated report are based on vague and generalised assertions about the impact and are unsupported by any objective analysis. The approach of the Council has prevented and delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. This represents the type of behaviour that may give rise to a substantive award against a local planning authority as described in Paragraph: 048 Reference ID: 16-048-20140306 of the *Guidance*.
15. The Council's approach has resulted in an unnecessary appeal and all the costs associated with it. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the *Guidance*, has been demonstrated and that a full award of costs is justified.

Costs Order

16. 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 Waltham Forest Council shall pay to Mr Ismail Sari, the costs of the appeal proceedings described in the heading of this decision.
17. The applicant is now invited to submit to Waltham Forest Council, 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.

Peter Eggleton

INSPECTOR