
Costs Decision

Site visit made on 14 March 2017

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 22 March 2017

Costs application in relation to Appeal Ref: APP/G5750/D/16/3165270 120 Chestnut Avenue, Forest Gate, London E7 0JJ

- 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 Jamie Ratcliff for a full award of costs against the Council of the London Borough of Newham.
 - The appeal was against the refusal of planning permission for formation of side dormer extension to existing loft.
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Decision

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

Preliminary matter

2. The Council was advised of the costs application on 8 February 2017 and given the opportunity to make comments. No response was received. I have therefore based this decision on the principles set out in the national Planning Practice Guidance (the PPG).

Reasons

3. The PPG 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 was made on four grounds. The first is that the dormer is described as having a flat roof, when the applicant maintains it is clear that it has a pitched roof, and thus the Council's consideration was based on a false premise. In my experience very few roofs are actually flat. Most have a slight pitch upon them to ensure that water sheds from the roof and does not pool. It is a matter of judgement as to where the pitch on the roof increases to such an extent that the roof no longer is 'flat' but rather is pitched. While I have found that the roof would be pitched, whether the roof of the dormer is pitched falls within that margin for such a judgement. I therefore do not consider the Council acted unreasonably in describing the roof of the dormer as being flat.
 5. The second ground is that the Council failed to take into account the letters of support submitted by the occupiers of the neighbouring properties. The failure to take these into account was unreasonable. However, the failure to take these letters into account did not, of itself, result in any unnecessary or wasted expense in the appeal process, other than the bringing of this omission to my
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attention. I consider that within the overall context of the appeal that this is not measurable.

6. The third ground was the Council relied upon a number of development plan policies that were not material to the decision making process. In my appeal decision I have gone through the policies referred to by the Council in the decision notice and have found a number which are of little weight in the consideration of an application for a domestic extension. However, it is a matter of judgement as to the weight that should be applied and as such I consider that here the Council did not act unreasonably.
7. The final ground was that the Council failed to take into account the possibility of a similar development being undertaken as permitted development in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as a fall-back.
8. When the appeal application was submitted, the Council had already, on 30 June 2016, refused the application for the Certificate of Lawful Use or Development subsequently granted on appeal¹ for the same development as the appeal proposal. The reason for refusal related only to whether the dormer extension consisted of an alteration or addition to the roof of the property because it is built on a party wall. From this it is clear, had the dormer been 'detached' from the party wall it would have, on the Council's case, been 'permitted development'.
9. In this scenario, the overall size of the dormer would have been very similar to the current appeal scheme. It would have had essentially the same overall dimensions, but would have been slightly separate from the party wall. The overall effects on the character and appearance of the area, and the living conditions on the occupiers of neighbouring properties would have been, fundamentally, the same.
10. While the weight to be given to the possibility of a fall-back taking place is a matter for the judgement of the decision maker, not to take the possibility of a fall-back taking place, when it had had a similar case in front of it and that was put to the Council in the Design and Access Statement, was unreasonable. Had it considered the possibility of the fall-back position with the same effects it would have, if acting reasonably, inevitably come to a different conclusion on the application.
11. This meant that it prevented development that should clearly have been permitted (see paragraph reference ID: 16-049-20140306 of the PPG) and led to the appellant preparing and making an appeal which should not have been necessary.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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

¹ APP/G5750/X/16/3155523

Council of the London Borough of Newham shall pay to Mr Jamie Ratcliff, 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.

14. The applicant is now invited to submit to the Council of the London Borough of Newham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

RJ Jackson

INSPECTOR