The Planning Inspectorate

Costs Decision

Site visit made on 10 March 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 29 March 2017

Costs application in relation to Appeal Ref: APP/C5690/X/16/3155422
Land at 45 Ringmore Rise, London SE23 3DE

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by BE57 Asset Management for a full award of costs against the Council of the London Borough of Lewisham.
- The appeal was against a refusal to grant a certificate of lawful use or development (hereinafter "certificate") for a rear extension to existing detached dwelling house.

Decision

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

Reasons

2. 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.

3. This claim for costs has been judged on its merits with all the evidence taken into account and with regard to the circumstances relating to the application and to the appeal. The gist of the award being sought is partly substantive, relating to the Council's alleged incorrect interpretation of the rules surrounding permitted development for householders and partly procedural, relating to the Council's alleged failure to co-operate, particularly with regard to the Council's refusal to accept or consider the revised drawings that were submitted with an email dated 24 January 2016.

4. In my appeal decision, I found that the Council acted contrary to the clear advice provided within the Technical Guidance relating to permitted development for householders insofar as its interpretation of Class A.1 (d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) was concerned. The correct approach was clearly articulated to the Council by the applicant before the decision to refuse to grant the certificate was taken. Moreover, it was this incorrect interpretation that no doubt led to the Council's officer to comment in an email dated 22 January 2016 that "Given the scale of the changes that would be required to make this proposal compliant, I will be unable to accept amendments."

5. The costs application refers to a procedural guide produced by the Planning Inspectorate. This encourages constructive discussions between an applicant and a Council and indicates that if a Council has concerns, it should

give the applicant an opportunity to amend the application before it is decided. The revised drawings were submitted in time and formed part of the application for the certificate. It was clear and understandable that BE57 Asset Management wanted those drawings to be considered given the Council's intended reasons for a recommendation against the issue of a certificate. I find it difficult to understand why the Council did not take this further submission into account. The amendments were exceptionally minor in nature. They consisted of annotating on the plan the highest part of the eaves of the existing dwelling (which should have been obvious upon a site inspection in any event) and marginal adjustments to the setting out of the rear extension and the plot, based on an accurate measurement of the plot's width, which should have removed any ambiguity about the interpretation of Class A.1 (i) of the GPDO.

6. The Council went on to accept and consider those revised plans in the context of a subsequent application where a certificate was granted for the same development (application ref. DC/16/095434).

7. Whilst understanding the pressures the Council might be under in having to reach decisions within the relevant statutory periods, the fact is that the revised plans were submitted before the decision was made and with a specific request for them to be considered. I find the Council's actions, in this particular case, in not taking this later information into account to be unreasonable, especially in the context of the constructive attitude demonstrated in the emails from Dominic Cummings (for BE57 Asset Management) as the application was being processed.

8. The substantive and procedural flaws exhibited by the Council amounted to unreasonable behaviour. They gave rise to the appeal being made and this resulted in unnecessary expenses for BE57 Asset Management. 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

9. 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 Lewisham shall pay to BE57 Asset Management, the full 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.

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

Andrew Dale

INSPECTOR