

Costs Decision

Hearing held on 10 May 2017

Site visit made on 10 May 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 17 May 2017

Costs application in relation to Appeal Refs: APP/U5360/C/16/3161809 and 3161810

Land at 69 Watermint Quay, Craven Walk, London, N16 6DN

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr H Schneck and Mrs Schneck for a full award of costs against the Council of the London Borough of Hackney.
 - The hearing was in connection with an appeal against an enforcement notice alleging the erection of a two storey extension at rear lower ground floor levels
 - **Summary of Decision: Application for a full award of costs fails**
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1. 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.

The submissions for Mr and Mrs Schneck

2. The Council has approved the plans for the extension and the development accords with those plans. It is unreasonable for the Council to take action against plans that have been approved and the Council failed to seek any extra details from the appellant. The appellant has incurred additional costs in seeking to retain the extension. The Council's conduct has been unreasonable as the appellant has a right to develop. They have a method through the prior notification procedure to see if conditions are met and the Council did not exercise due care.

The response by the Council

3. Whilst the prior approval process has been followed, it is incumbent on the developer to build within the limitations and conditions of the General Permitted Development Order (the GPDO). This has not occurred and that was outside the Council's control. The Council has a duty of care in the public interest to pursue enforcement action.

Reasons

4. Permitted development rights allow householders to extend their homes without the need to apply for planning permission where that would be out of proportion with the impact of the works carried out. Larger single storey rear extensions are permitted by the Order for a temporary period subject to the prior notification procedure involving the submission of a written description of
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the proposal which includes its depth, height and the height of the eaves of the enlargement. It also requires a plan indicating the site and showing the proposed development, and the address of adjoining premises.

5. As the notification took place in December 2013, it is the provisions of the Town and Country Planning (General Permitted Development) Order 1995, as amended, that applies.
6. The proposal was described by the appellant's agent as 'Large home rear extension, dimensions, 6 metres deep, 4.5 metres wide and a height of 3 metres from natural ground level'. A plan attached to the notification showed the extension in relation to the upper ground floor of the dwelling and the garden. The plan does not indicate the rear metal platform or steps. The Council described the proposal as for 'erection of a single storey rear extension at ground floor level measuring 6m in depth x 3m to the eaves (3m height max)' but were unable to explain why this description had been changed. The Council did not carry out any site inspection or request further information from the appellant although the adjoining occupiers were notified who did not object to the extension. The Council determined that deemed approval was not required on 4 February 2014 (Ref 2014/0068). The appellant then proceeded to construct the extension.
7. Had an officer with knowledge of the Watermint Quay development determined the prior approval notification, that officer should have been sufficiently aware of the site characteristics and the design of the development to question the details provided by the appellant and to request further information. Had this been done a different decision might have been reached. In the event it appears that the officer only considered the details submitted at face value which, on the basis of the submitted information, met the conditions and limitations of the GDPO. Whilst the Council is criticised by the appellant for not requesting additional information, the agent, who it is understood to have experience of such applications, could have volunteered information over and above the minimum requirements in view of the unusual nature of the host building and the site.
8. The decision of the Council on a prior approval notification is not a planning permission, nor a Lawful Development Certificate. The planning permission is granted by virtue of Paragraph 3 (1) of the Order which at Paragraph 3 (2) states that any permission is granted subject to any relevant exception, limitation or condition specified in Schedule 2 of the Order. As with any grant of planning permission the developer has to adhere to any conditions set out in the decision notice. Whilst the appellant has a right to develop, that right can only be exercised by meeting the conditions and limitations attached to those permitted development rights.
9. The development has generated a considerable number of representations and the Council determined that it was expedient to pursue enforcement action which has been taken in the public interest.
10. I consider that had the Council been more diligent in dealing with the notification, then this appeal might have been avoided. On the other hand, had the appellant been more forthcoming with details of the unusual characteristics of the site, the Council's response might again have been different, thereby avoiding the need to appeal. Additionally, had the appellant built the extension to which the Council had determined did not require prior

approval and met all the conditions and limitations of the GPDO, then an appeal would not have been necessary.

Decision

11. The Guidance points out that all parties are expected to behave reasonably throughout the planning process. In this case, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and an award of costs is not justified.

P N Jarratt

Inspector