
Costs Decision

Site visit made on 22 May 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 30th May 2017

Costs application in relation to Appeal Ref: APP/Q5300/W/17/3169616 46a Park Road, Enfield EN3 6SS

- 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 the Council of the London Borough of Enfield for a full award of costs against Mr Dogan Dogus.
 - The appeal was against the refusal of planning permission for conversion of a 4 bedroom house into two self-contained flats.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Advice over the award of planning appeal costs is set out in the Government's Planning Practice Guidance (PPG). It states the established premise that parties to an appeal normally meet their own costs. However, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Unreasonable behaviour in this context can be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
3. Paragraph 53¹ of the PPG provides examples of what types of behaviour may give rise to a substantive award against an appellant. Those relevant to the Council's application are firstly that the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
4. Secondly, the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same site where the Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
5. In the case of the first example I must give some weight to the appellant making the case that the subdivision of the house would provide accommodation for parents whereby they would be able to live independently and be close enough for care to be offered as required. This would be a material consideration in respect of the appellant's family needs advanced in

¹ Paragraph: 053 Reference ID: 16-053-20140306

support of the proposal. Although I have found this factor not to outweigh the Council's policy to prevent the loss of family-sized dwellings, using the right of appeal to advance this as a material consideration would not have been unreasonable in my view.

6. Furthermore, the proposal had revised the layout of the accommodation to overcome the concerns with the previous appeal scheme providing for inadequate living conditions in respect of the poor outlook from one of the ground-floor flat bedroom windows. Whilst the scheme had not overcome the stacking concerns with regard to the earlier appeal scheme, this revised layout appears to be an attempt to avoid the previous policy objections which weighs further in my not finding unreasonable behaviour.
7. Although the appellant has used a professional agent to prepare the plans it is evident that the appeal was not made with the benefit of professional planning advice. Therefore, the appellant might have been unaware of the PPG advice regarding the making of an appeal against a decision over a development substantially the same as found recently unacceptable by an Inspector.
8. I make no judgement over the appellant's criticisms of how the Council dealt with the application. However, these have no bearing on the case made by the Council for an award of costs in respect of the subsequent appeal which is reasonably made. Nevertheless, because of the material changes made to the proposals, the case made for it to be allowed, and given my view that the appellant might not have been provided professional planning advice in advance of the second appeal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been fully demonstrated.
9. Consequently, I conclude that this application for costs should be refused.

Jonathan Price

INSPECTOR