
Costs Decision

Site visit made on 25 April 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 6th June 2017

Costs application in relation to Appeal Ref: APP/U5360/W/17/3168239 12-30 Milborne Street E9 6RD

- 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 Richard Bird for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of planning permission for the erection of conjoining single storey extensions at second floor level across the entire row of terrace houses at Milborne Street E9. This will extend the use of the houses to create viable 3- or 4-bedroom family homes as opposed to the current 2 bedroom units, creating 264 sq metres of new living space.
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) 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.
 3. Paragraph 049 of the NPPG states that examples of unreasonable behaviour by local planning authorities with respect to the substance of the matter under appeal includes requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework) on planning conditions and obligations. Paragraph 047 of the NPPG states that examples of unreasonable behaviour with regards to procedural matters includes providing information that is shown to be manifestly inaccurate or untrue.
 4. Looking firstly at the substantive concern, the appellant considers that by requiring a planning obligation seeking to secure the completion of the proposed scheme in its entirety the Council has sought to impose a restriction which is unlawful.
 5. As a starting point section 106 (1)(a)-(c) of the Town and Country Planning Act 1990 state that planning obligations may be entered into which have the effect of (a) restricting the development or use of the land in any specified way; (b) requiring specified operations or activities to be carried out in, on, under or over the land; (c) requiring the land to be used in any specified way. In this case the obligation sought by the Council would require specified operations, in this case the proposed roof extensions, to be completed in full. Therefore such
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an obligation in and of itself would not be contrary to the requirements of section 106.

6. More specifically, the legal and policy tests for planning obligations are set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010. A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is necessary to make the development acceptable in planning terms; is directly related to the development; and is fairly and reasonably related in scale and kind to the development. These legal tests are also set out in paragraph 204 of the Framework.
7. Looking at each of these elements, firstly the Council have articulated their concerns about the effect of the partial completion of the development on the character and appearance of the area, and the fact that in this respect an obligation would be necessary to make the development acceptable in planning terms. Whilst such considerations are a matter of planning judgment, I have come to the same conclusion as the Council in my decision. Secondly, in seeking to secure the completion of the entire scheme as proposed, such an obligation would be directly related to the development. Finally, such an obligation would be commensurate to the scale of development proposed and therefore fairly and reasonably related to it in scale and kind. Whilst the challenge of obtaining the commitment of all 10 owners of these terraced properties is accepted, this would be a matter for the appellant.
8. The appellant has referred to previous similar developments which have been allowed to progress without a planning obligation and therefore, he believes, set a precedent. Specific reference is made to the appeal decision at Reedholm Villas¹ in which mansard roof extensions to 11 properties were proposed. In this case the Inspector concluded that as a consequence of his view that *even were the development not to be completed in its entirety I disagree with the Council that this failure would lead to a significant visually obtrusive or harmful form of development. Therefore as a consequence of my conclusions regarding the design and visual impact of the proposals, I do not consider that either an obligation or condition would be required in order to make the development acceptable.*
9. As my own decision in this case makes clear, I have reached a different conclusion regarding the design and visual impact of the present proposals. I have identified that the piecemeal implementation of the proposal would undermine the design integrity of the appeal terrace and the wider Elsdale Street/Well Street development. Therefore without a suitable planning obligation harm to the design integrity of this uniform terrace block would be the likely outcome. In this respect there is a clear difference between these two cases, and the previous appeal decision does not set a precedent. I have therefore concluded that the Council has not demonstrated unreasonable behaviour by requiring a planning obligation in this case.
10. Turning to the procedural concern, the appellant has provided evidence that the original officer report relating to this case stated that a planning obligation would be required *'to ensure the development is completed within 5 years of implementation'*. A subsequently revised version of this report supplied with the appeal documentation states that a planning obligation is required *'to*

¹ APP/U5360/W/15/3110377

ensure the development is completed in full'. The appellant expresses concern that this amendment weakens his case, arguing that this five year time limit forms the basis of his appeal. I agree that such an amendment to the appeal documentation is not appropriate and does not represent a professional approach to such matters.

11. However, whilst the initially recommended 5 year timescale to secure the completion of this scheme may have been unreasonable, it does not appear that this was presented as an absolute requirement. My view is that, if the appellant had wished to progress this pre-requisite, an obligation could have been drafted and agreed between the parties that could have included more realistic timescales. As such my view is that this amendment has not in itself unduly prejudiced the appellant's case. Therefore, whilst frustrating to the appellant, this matter has not resulted in additional or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated.

AJ Mageean

INSPECTOR