



Costs Decision

Site visit made on 31 May 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 23 June 2017

Costs application in relation to Appeal Ref: APP/V5570/W/16/3166168 and APP/V5570/Y/16/3166169

Flat 3, 68 Highbury Park, Islington, London N5 2DJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6; the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3; and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Christoph Boomgaarden for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission and listed building consent for what was described as a 'single storey rear extension to rear of house (lower ground floor level) accessed via garden'.
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Decision

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

Reasons

2. The Planning Practice Guidance 2014 advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
3. The application for costs was made by the appellant with reference to a refusal to grant permission and listed building consent for what was described as a 'single storey rear extension to rear of house (lower ground floor level) accessed via garden'. The appellant believes that the Council acted unreasonably because it failed to adhere to deadlines and adopted an 'uncollaborative' approach thus failing to adequately co-operate. Taken together these perceived failings risk an award of costs on procedural grounds.
4. The Council acknowledges that it did not adhere to the statutory time limits in reaching a decision and has highlighted the ongoing interaction with the appellant's agent who sought to resolve its concerns. I note from the evidence before me that the exchanges between the parties continued until mid-September when the Council was specifically asked to consider a number of points by the appellant after it had indicated that a reduction in the footprint of the extension might overcome its concerns. I also note the undisputed fact that the appellant only confirmed a wish to proceed with an unmodified scheme in November, shortly before the refusal was issued. It is clear that the Council went to some lengths to engage with the appellant and I find the failure to

adhere to a deadline entirely reasonable under the circumstances. Consequently, I do not find that the Council behaved in an unreasonable manner in relation to the time it took to reach a decision.

5. As the Council has pointed out, disagreement over the particular merits of a case that ultimately leads to a negative outcome is not a ground for an award of costs. The evidence before me establishes that pre-application advice was given and that there was an opportunity to modify the scheme prior to its final determination. This was set out in unequivocal terms and provided an, albeit more limited, opportunity to add a further extension despite it being 'not normally' allowed. Planning issues often involve matters of judgement that differ and my own appeal decision reflects this fact as it is also contrary to the views of the appellant. Consequently, I do not find that the Council behaved in an unreasonable manner in relation to how it co-operated with the appellant.
6. In response to the Council's rebuttal, the appellant has suggested that it failed to consider the revised proposal any differently to a previously refused scheme (Ref: P2015/2104/FUL and P2015/2417/LBC). I note from the evidence before me that the proposal was considered on its individual merits given the content of the case officer's report and the professional opinion of the design and conservation officer. The fact that the same conclusion was reached merely indicates a failure to adequately address a fundamental design issue, i.e. depth.
7. Given the above, I am satisfied that the Council acted reasonably in all respects. As such, the appeal could not have been avoided and no unnecessary or wasted expense was consequently incurred. For this reason and having regard to all other matters raised, an award of costs is therefore not justified.

Roger Catchpole

INSPECTOR