

Costs Decision

Site visit made on 7 June 2017

by D J Barnes MBA BSc(Hons) DipTP MRTPI

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

Decision date: 29 June 2017

Costs application in relation to Appeal Ref: APP/R5510/D/17/3171819 98 North Hyde Road, Hayes, Middlesex UB3 4NG

- 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 Charanjit Rattu for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of planning permission for the conversion of a garage space which forms a part of an outdoor building to a Granny Annex.
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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. The appellant is seeking a full award of costs because the Council acted unreasonably in refusing the appeal application principally because of a stated lack of adequate justification concerning the proposed use of the accommodation to be provided within part of the existing outbuilding. Reference is made by the appellant to the full description of development included on the application form which described the proposed use and the reason why the accommodation was required. Further, as part of the pre-application process, there was an exchange of e-mails between the Planning Officer which identified the proposed use and the Council's suggestion that a Unilateral Undertaking be provided to restrict the use. Although they have not been adduced, the Council provided appeal decisions to the appellant which appear to have included both dismissed and allowed schemes. The appellant has also highlighted the opportunity for the Council to have imposed conditions to restrict the granny annex use rather than refuse the appeal application.
4. The Council consider that there were sound planning grounds to have refused the appeal application by reference to relevant development plan policies and the guidance contained in the Council's *Hillingdon Design and Accessibility Statement Supplementary Planning Document – Residential Extensions*. These considerations took into account the planning history of the outbuilding and its scale which offered the potential to be used as a self-contained residential unit.

5. In determining the application, the Council maintains that there was inadequate information about why the proposed accommodation was required for purposes incidental to the host property. Reference is made to the appellant being made aware of what was required but what other information the Council may have sought is unknown to me, including the content of the other appeal decisions. The Council claim that the reason for refusal is clear about why the appeal application was refused. The Council has also responded to the appellant concerning why it is now considered inappropriate to impose an occupancy or use restriction condition because of concerns about enforceability.
6. It is clear that the Council in determining the proposal was particularly concerned about the potential to create an independent dwelling within the outbuilding rather than the proposed granny annex use being only ancillary accommodation to 98 North Hyde Road. Part of the reason for refusal and the development plan policies relied upon by the Council are directed towards the potential for independent use.
7. It is evident from the original description of development what was being proposed by the appellant and why. The same information was provided in the pre-application exchange of e-mails. The Council's amended description, as stated on the decision notice, also refers to a granny annex. In my judgement, it was clear what the application sought.
8. The proposed use of part of the outbuilding as a granny annex would not change the current planning unit. Accordingly, as claimed by the appellant, the concerns about over-development and over-intensification of use, particularly associated with an independent residential unit, would not arise, including matters such as the provision of additional amenity space and parking.
9. I have also identified in my appeal decision that the reason for refusal was vague in terms of what harm would be caused to the living conditions of the occupiers of neighboring properties. As with other dwellings, the outbuilding in the property's back garden currently exists and there would not be a material change to the character and appearance of the building or the surrounding area. The erection of the proposed French doors to replace the garage door was not objectionable to the Council. Accordingly, there is limited evidence, including in the Planning Officer's report, to support the concerns raised in the reason for refusal on this issue.
10. The Planning Officer's report does not refer to, nor discount, the potential for imposing a condition to restrict the use of the granny annex. The concerns about enforceability have only been raised as part of the Council's rebuttal to the costs application. However, the potential for some form of occupancy restriction, albeit in the form of a Unilateral Undertaking, was raised by the Council in the pre-application exchange of e-mails. There would not be a material difference between monitoring and enforcing either a Unilateral Undertaking or a condition which restricted the proposed granny annex use to part of the outbuilding.
11. Conditions restricting the use and extent of the proposed development could have been imposed as claimed by the appellant and they could be reasonably enforced by the Council. Whether the appeal decisions provided by the Council

to the appellant before the submission of the application addressed the potential or not to impose a condition restricting use is unknown to me.

12. This is a case where an otherwise unacceptable development could have been made acceptable through the use of appropriate conditions to restrict the use of the granny annex as applied for by the appellant. 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

13. 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 Hillingdon shall pay to Mr Charanjit Rattu, the 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.
14. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D J Barnes

INSPECTOR