The Planning Inspectorate

Costs Decision

Site visit made on 10 October 2017

by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2018

Costs application in relation to Appeal Ref: APP/U5930/W/17/3181328
49b The Drive, Walthamstow, London E17 3DF

- 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 Maurice Richards for a full award of costs against the Council of the London Borough of Waltham Forest.
- The appeal was against the refusal of planning permission for demolition of existing garage and redevelopment into a block of two 3 bed four person maisonettes.

Decision

1. The application is refused.

Reasons

2. Irrespective of the outcome of the appeal, 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's application for costs is based on a substantive matter, that is, relating to the merits of the appeal rather than a matter of procedure. In particular the appellant considers that the Council's refusal of permission failed to take into account previous appeal decisions; and that the reason for refusal was vague and not justified by the Council.

4. There have been two recent appeal decisions relating to this site. The first, APP/U5930/W/15/3130815, for a single dwelling, was allowed on 29 February 2016. That decision is referred to in the officer's report and was clearly taken into consideration by the Council in the determination of the application that forms the subject of this appeal. A second appeal ref: APP/U5930/W/17/3179358, for a block of 2 maisonettes was allowed on 27 October 2017. This decision was issued well after the determination of the application on 5 January 2017 and after this appeal had been lodged. Consequently it could not have been taken into account by the Council in reaching its decision. There can therefore be no unreasonable behaviour in the Council's lack of reference to it.

5. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Council refers to relevant development plan policies in its officer report and reason for refusal. Those policies require, amongst other things, that new development addresses the potential impact on neighbouring amenity including by ensuring that outlook is maintained. This is a matter of planning judgement.

6. The appeal proposal differs from that in the first, allowed, appeal in terms of its design, height, form and massing, particularly in relation to the roof structure, and in terms of the number of residential units proposed. Whilst I have found that there is no material difference in the impact of the proposals in terms of outlook over the approved scheme, it was not unreasonable for the Council to consider the impact of the amended proposal on the living conditions of neighbouring residents.

7. In addition, whilst there are some similarities between this scheme and that allowed at the first appeal, the main issue in that case was the effect of the development on the character and appearance of the area rather than on the living conditions of neighbouring residents, which the Inspector did not therefore need to address.

8. The officer report makes it clear that there is no issue regarding the impact of the development on the outlook of occupiers facing the property on Blackberry Close. It states that the concern relates to occupiers of properties fronting The Drive. Whilst no individual properties are referred to specifically, it is not unreasonable to draw the conclusion that those properties are the ones adjacent to the site, including No 49b itself. The Council did not submit a statement of case, but this is not in itself unusual. The Council's concerns in relation to the height and bulk of the scheme are clearly set out, albeit briefly, in the officer report and reason for refusal, and the proposal assessed against relevant policies.

9. Given the fundamental disagreement between the parties about the merits of the particular case, the matter could only have been resolved by way of an appeal.

10. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance, has not been demonstrated.

S Ashworth

INSPECTOR