



Costs Decision

Site visit made on 6 August 2019

by Stephen Hawkins MA MRTPI

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

Decision date: 11 September 2019

Costs application in relation to Appeal Ref: APP/Y5420/X/19/3224449 37 Richmond Road, Wood Green, London N11 2QR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr M Robinson for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of a certificate of lawful use or development for erection of 3 metre rear extensions on the two original rear walls forming an L-shape extension.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) on appeals advises that parties should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. The applicant sought an award of their costs on substantive grounds. Summarised, the applicant claimed that the Council had failed to determine the LDC application in a fair, reasonable, consistent and legal manner. The Council had not applied planning law correctly. It took the planning merits of an unauthorised extension in an enforcement notice into account when determining the application. The Council had used an incorrect description of the development in its decision and referred to an incorrect plan. Whilst the Council subsequently corrected its error regarding the description, in all other respects it continued to rely on its decision to refuse the application, thus necessitating the submission of an appeal.
4. The PPG paragraph 049 advises that a Council risks an award of costs where it behaves unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The non-exhaustive list of examples of when Councils are at risk of an award of costs include: failure to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; acting contrary to, or not following,

- well-established case law, and; not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management.
5. The unauthorised extension is subject to an enforcement notice and is in situ on the footprint of the proposed extensions. Therefore, in my view it was not unreasonable for the Council to consider the effect thereon of granting an LDC for the extensions. In substance, by refusing the application the Council concluded that the information submitted was not sufficiently precise and unambiguous to show that the extensions would not incorporate part of the unauthorised extension. Consequently, the Council interpreted the application as if it involved modification of the unauthorised extension.
 6. The reasoning for the Council's approach was set out in the delegated report and was amplified in the statement of case. The Council clearly explained in an objective manner why it considered its approach and the decision on the application was well-founded. In reaching this conclusion, the Council made a judgment based on its interpretation of the facts and circumstances of the case together with the relevant law. Reference was also made to a 2017 enforcement appeal decision from another site, which the Council felt assisted its case. I did not find anything substantive in the Council's case to suggest that its decision was unduly influenced by an irrelevant factor, i.e. the planning merits of the unauthorised extension. Overall, there was little in the Council's case that could be described as fundamentally unsound.
 7. Having regard to what was shown on the plan initially submitted with the application, the supplementary plan requested by the Council added little information to what the proposal involved. Furthermore, the Council made administrative errors when it amended the description of the proposed development on the decision notice and omitted reference to the plan showing two extensions. Even so, the Council corrected these errors within a reasonable timescale, prior to an appeal being made. Although the initial decision notice and the delegated report referred to one extension, when the Council's case is taken as a whole it is apparent that it clearly understood there were two proposed extensions. The corrected decision notice refers to the plan showing two extensions, as well as the site plan and supplementary plan.
 8. Therefore, to my mind none of the above instances provide firm evidence of the Council misunderstanding the nature of the application, conflating the extensions with the unauthorised extension, or of failing to take account of the plan showing the two extensions. The Council clearly dealt with the application as one made under s192 (1) (b) of the Act. Moreover, given what the Council saw as appreciable uncertainty over what was involved in the proposal, I do not find significant errors in terms of their interpretation of planning law.
 9. In any event, as set out in paragraph 006 of the PPG regarding LDCs¹, the onus is clearly on an applicant to submit evidence to demonstrate why a lawful development certificate should be issued on the balance of probability. In cases of proposed development, paragraph 006 advises that an applicant needs to describe the proposal with sufficient clarity and precision to enable the Council to understand exactly what is involved. This paragraph is also clear that the Council can refuse such applications in circumstances where the applicant's evidence alone is insufficiently clear and precise to satisfy the balance of probability test. Therefore, the Council were not in the position of

¹ Reference ID: 17c-006-20140306.

having to disprove the claim made in the application. Whilst my own judgement on the facts and relevant law have resulted in a different outcome at appeal, based on the available evidence the Council was entitled to make the decision that it did and has properly made out the grounds for doing so.

10. As a result, I have not found anything to suggest that the Council has behaved unreasonably in terms of its substantive case as described in the PPG at paragraph 049. The Council did not act in a manner similar to any of the examples of unreasonable behaviour referred to in that paragraph. Accordingly, the Council has substantiated its case at appeal and the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in the above appeal.

Stephen Hawkins

INSPECTOR