

Costs Decision

Site visit made on 18 September 2019

by Sandra Prail M.B.A., LL.B (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Costs application in relation to Appeal Ref: APP/N5660/X/19/3220893 Land at 42 Rudloe Road, London, SW12 0DS

- 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 Nicholas Scarborough for a full award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against the refusal of a certificate of lawful use or development for proposed erection of a rear roof extension including the removal of a side chimney stack, and the replacement of two floor side windows with one first floor side window.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that 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 Guidance provides that a Council is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. In order to determine the application the Council had to decide whether the proposed operations would have been lawful had they commenced on the date of the application. The Council changed its approach to the determination of applications for a certificate of lawful use or development concerning L shaped dormers in response to an Inspector's decision on appeal.
5. The Appellant argues that the appeal decision relied upon by the Council is fundamentally different to the appeal proposal and that the appeal decision was not relevant. Whilst I agree that the schemes are not equivalent I consider that there was sufficient similarity to justify the Council taking the appeal decision into account. Previous appeal decisions are a material consideration which Councils should take into account. I am not satisfied on the evidence before me that the Council determined the application based on a misunderstanding of the submitted scheme.

6. The Guidance provides that a Council is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal.
7. The Council has provided detailed evidence in this appeal to support its arguments. This has included drawing to my attention decisions on appeal that have been issued after it submitted its representations. Whilst I do not agree with the Council's assessment of the case I do not find the Council to have failed to provide evidence to substantiate its grounds of refusal and it has not acted unreasonably in this respect.
8. The Guidance provides that a Council is at risk of an award of costs if it acts contrary to, or does not follow, well-established case law or does not determine similar cases in a similar manner.
9. The Council has justified its position in its submissions on appeal and whilst I do not agree with the Council their submissions are not so flawed as to be unreasonable.
10. I find that the Council has made an assessment in this case taking into account relevant material considerations, including other appeal decisions. I do not find any evidence that the Council wilfully ignored appeal cases which were relevant. I recognise that there are appeal decisions before me which place different interpretations on the wording of the Technical Guidance. In this context the Council did not act unreasonably in adopting one approach at the expense of another. The matter in dispute in this case has not been tested in the Courts.
11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. I conclude that the award of costs sought by Mr Nicholas Scarborough against the Council of the London Borough of Lambeth is not justified. The application should be refused and there is no justification for a partial award.

S. Prail

INSPECTOR