



Costs Decision

Site visit made on 18 November 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Costs application in relation to Appeal Ref: APP/R5510/W/19/3235156 30 Long Lane, Ickenham UB10 8TA

- 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 Keith Darbyshire for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for part single, part two-storey side & rear extension, creation of 3 no. dormer windows to rear plus alteration to the front & rear gardens and new dropped kerb, to facilitate a new layout to the existing flats.
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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's concerns in relation to costs appears to stem from two issues. First, the inconsistent advice given by the Council, both at pre-application stage and during the course of the application. Second, the Council's failure to determine the application.
4. On the matter of pre-application advice, the main issue raised in the appeal before me relates to character and appearance, which is of a subjective nature. Whilst having regard to the importance of formal pre-application advice, it is not unreasonable that the assessment of the proposal through the planning application process may identify concerns or amendments based on consultation and wider consideration. Indeed, the evidence suggests that a proposed first floor rear extension was removed from the scheme in response to consultation. I am also mindful that pre-application advice is not binding on the Council. Therefore, I conclude that the Council has not behaved unreasonably with regards to its consideration of pre-application advice.
5. I have had regard to the Shefford Lower School decision referred to by the appellant. However, the issue in that case related to consistency of advice on highway safety issues, which in my view is a technical matter where variation in advice should be clearly justified. This does not reflect the subjective nature of the main issue in the appeal before me and does not lead me to a different conclusion in respect of pre-application advice.

6. However, on the matter of advice given during the course of the application, this has ultimately been unsatisfactory. A number of amendments were requested by the Case Officer on the basis of consultation and Council policy, and which the appellant was able to respond to. However, even when the amendments had been submitted the Council expressed concern in relation to proximity to the side boundary on this corner plot in a conservation area. Although it was suggested that the appellant could amend the scheme further, this advice is of a vague nature compared to the previous comments made on the scheme. There would therefore be little confidence that further amendments could address the Council's concerns.
7. With regards to a failure to determine the application, the Council's rebuttal refers to a decision notice and reasons for refusal when in fact no formal decision has been issued. Having regard to the evidence of advice given over the course of the planning application, the Council has not given a proper explanation of why it has failed to determine the application. If clearer advice had ultimately been provided then the appellant may have been able to amend the scheme further to address the Council's concerns, which would have enabled the appeal to be avoided. That said, I have concluded that the appeal scheme is acceptable in its present form.
8. I am mindful of the issues raised by this appeal proposal located on a prominent site within a conservation area. However, even within that context, the advice given by the Council during the process leading to this appeal has been inconsistent, dilatory and ultimately vague. The appellant has approached this scheme in a proactive manner, and in amending the scheme has addressed the substantive advice given by the Council. Despite this, the Council has failed to determine the application and the appellant has not acted prematurely in submitting this appeal. This is unreasonable behaviour on the part of the Council and the appellant has incurred unnecessary and wasted expense by having to appeal.

Conclusion

9. In the light of the above, I have found 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

10. 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 Keith Darbyshire, 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.
11. 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.

David Cross

INSPECTOR