
Costs Decisions

Site visit made on 20 November 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 January 2020

Costs application in relation to Appeal Ref: APP/V5570/W/19/3234757 26 Richmond Avenue, Islington, London N1 0ND

- 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 Thomas Aldridge for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission for single story extension at second floor level above existing two-storey side extension to provide additional bathroom.
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Costs application in relation to Appeal Ref: APP/V5570/Y/19/3234756 26 Richmond Avenue, Islington, London N1 0ND

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Thomas Aldridge for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of listed building consent for single story extension at second floor level above existing two-storey side extension to provide additional bathroom.
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Decisions

1. The applications for costs in relation to both appeals are refused.

Procedural Matter

2. A single application for costs was submitted. However, its content relates to both the planning appeal and the listed building consent appeal, which were joint applications. Given that the substance of the applicant's case is the same in relation to both, it is sensible to deal with them together.

Reasons – both applications

3. The Planning Practice Guidance (PPG) 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.¹
4. It is also confirmed in the PPG that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding,

¹ Paragraph: 030 Reference ID: 16-030-20140306

- behaviour and actions at the time of the application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.²
5. The applicant submits that the Design Access and Heritage Statement (DAHS), which accompanied the planning and listed building applications, comprehensively addressed the reasons that the Council had refused a previous similar proposal at the appeal property.³ Therefore, the applications for costs are essentially based on the merits of the proposal which are discussed in more detail in the main appeal decisions.
 6. Although not specifically referred to by the applicant, one of the examples given in the PPG of the type of behaviour that may give rise to a substantive award of costs against a local planning authority is: *'preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.'*⁴ That appears to be the essence of the applicant's case.
 7. It is further submitted by the applicant that the Council did not acknowledge the DAHS or deal with the arguments presented within it. While the DAHS is not specifically referred to in the Council Officer's Delegated Report (DR), that does not of itself indicate that it was not considered as part of the assessment. Moreover, the Council has since confirmed that the DAHS was considered, along with the other documentation and information submitted with the applications.
 8. Indeed, the DR addresses the main content of the DAHS, which is largely focussed on the presence of an existing second floor side extension at the adjacent property. In addition, the DR also assesses the aspects of the listed building and the conservation area which the Council considered contribute to the significance of those designated heritage assets, while the relevant statutory tests and development plan policies and associated guidance were detailed along with the harm associated with the proposed scheme.
 9. According to the applicant, his agent contacted the Council during the consideration of the applications to discuss *'apparent differences in interpretation of the policy and guidance implications of the proposal.'* However, copies of email exchanges between the parties indicate that the Council shared its heritage concerns about the proposal with the applicant but ultimately considered that, given the fundamental nature of its objection to the principle of a second-floor extension, there was little that could be achieved through further discussion, negotiation or amendment. Therefore, it appears to me that there was a reasonable level of dialogue during the process.
 10. The applicant says that the Council did not explain in the DR or decision notices in what way the policies or guidance were breached. However, the DR and decision notices explain the Council's assessment in relation to the statutory framework and relevant policy and guidance, with appropriate extracts. For example, the decision notices refer to unacceptable infilling of an important gap between the properties and its effect on the original façade. The DR includes extracts from the Conservation Area Design Guidelines which detail the contribution made by gaps between properties in streets, including Richmond

² Paragraph: 033 Reference ID: 16-033-20140306

³ P2017/2016/FUL and P2017/2081/LBC

⁴ Paragraph: 049 Reference ID: 16-049-20140306

Avenue, within the Barnsbury Conservation Area. Therefore, I do not agree that the Council's analysis or explanation was inadequate.

11. The applicant says that the Council used 'value judgements' such as 'important' and 'inappropriate' without '*justifying these terms with reference to objective and measurable evaluation.*' However, it is the job of planning officers and conservation officers to apply their professional judgement in assessing proposals and their effects. While the applicant may disagree with the assessment and the interpretation of relevant statute and policy, that does not mean that the Council has acted unreasonably. Furthermore, as is apparent from the content of the main appeal decisions, I took a similar view to the Council regarding the substantive aspects of the appeals.
12. While the applicant holds that it referred to similar cases approved by the Council or on appeal, those cases related to first-floor rather than second-floor side extensions and, therefore, did not have obvious relevance to the appeal proposal. Although that aspect was not specifically addressed in the DR, the Council adequately explained its assessment of the proposal and the reasons for refusal were sufficiently detailed. The Council has also since expanded on those issues and dealt with the 'consistency' argument relating to other nearby permissions in its Statement of Case.
13. The applicant complains that the DR and reasons for refusal were identical, in all material aspects, to those relating to the previously refused applications. However, given the appeal proposals were very similar to the previous scheme and the relevant statutory and policy Framework had not substantively changed, it is not surprising that the assessment and reasons for refusal were similar. Indeed, the DR points out the similarity between the schemes by a comparison of the relevant plans. Therefore, there was consistency in the Council's approach.
14. While the applicant's views about the acceptability of the scheme are clearly sincerely held, the Council made a different professional assessment which it has substantiated by reference to the relevant legal and policy frameworks. I agreed with most aspects of the Council's evaluation of the proposal in the main appeal decisions. Therefore, it is consistent for me to find that the applications for costs should fail.
15. However, even if I had taken a different view in the main appeals, the Council's behaviour could not be considered unreasonable as there was a legitimate debate to be had about the merits of the case and planning and heritage judgements to be made. The Council was entitled to make such judgements provided it supported them with a reasonably coherent analysis of the proposal as it related to relevant statute and policy, which it did.

Conclusion

16. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, no award of costs is made in relation to either appeal.

JP Tudor

INSPECTOR