
Costs Decision

Site visit made on 6 January 2020

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Costs application in relation to Appeal Ref: APP/M5450/W/19/3239046 35 Wolseley Road, Harrow HA3 5RU

- 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 Turgay Yigit for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the refusal of an application for planning permission for internal renovation and first floor rear extension plus conversion of the premises into two self-contained residential units.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ (PPG) 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. These grounds may be procedural or substantive. The applicant submits that the Council acted unreasonably in determination of the planning application and prevented development taking place which should have been permitted.
3. There has been a recent appeal² relating to a similar proposal at this property. Two of the main issues related to the position of the refuse storage and cycle parking to the front of the property and the effects upon the living conditions of lower flat occupiers and on the character and appearance of the area. The Inspector found that bin and cycle storage in this position would be acceptable. The appeal however, was dismissed due to inadequate provision of suitable outdoor amenity space. The appeal associated with this costs application seeks to address this previous reason for refusal by providing rear garden space for the upper flat.
4. It is contended that the Council did not give adequate reasons for refusal, did not take account of the evidence submitted which clarifies the appellant's right of access to the rear of the appeal property and did not consider the findings of the previous appeal decision.
5. Although the Council did not submit a statement of case, relying instead upon its original officer report, within this it has substantiated its qualitative reasons

¹ Planning Practice Guidance – Appeals. Published March 2014.

² APP/M5450/W/19/3222846.

for refusal citing the proposed garden's poor accessibility and quality. This was supported by comments from the Council's Landscape Architect and referred to relevant policy. However, within the officer report there is an error regarding the required area of outdoor amenity space set out in the London Plan³ 2016. This recommends 6 square metres (m²) of outdoor amenity space whereas the officer report cites this as 7m². However, the reason for refusal does not refer to the size of the space but to its quality and accessibility. The error has therefore not affected the outcome of the Council's decision. Additionally, the Council's findings on this matter are supported by my own conclusions on the appeal which find harm to the living conditions of future occupiers with respect to the proposed garden space. On this issue I therefore do not consider that the Council have acted unreasonably.

6. The appellant states that the Council did not take account of the evidence submitted which clarifies that there is a right of access to the rear of the appeal property. The officer report paragraph titled "Revisions to previous application" states that access to the amenity space has been demonstrated. This is supported by the officer report which goes on to discuss the Council's concerns with this route. The Council therefore demonstrated that they considered there to be a right of access and assessed the proposal as such. No unreasonable behaviour has been demonstrated.
7. Finally, it is contended that the Council has not considered the findings of the previous appeal. The officer report makes appropriate reference to this appeal however, as the current proposal altered the position of the cycle parking from the front to the rear of the property, this new position was assessed and found inadequate. My own conclusions on this matter within the appeal accompanying this application concurs with the Council's findings.
8. The officer report takes account of the previous appeal decision and the fact that the Inspector in that instance did not consider that the cycle parking arrangement, as then proposed, would result in any harm. The report goes on to suggest that the position of the cycle parking could be resolved through a planning condition. Despite this suggestion, the Council included the lack of appropriate cycle parking as a reason for refusal. In these circumstances it is reasonable to base an appeal statement upon the reason for refusal within the Decision Notice which is what the appellant did. Additionally, the appellant themselves raised the possibility of the front garden position for the cycle parking and although the Council introduced some uncertainty into this reason for refusal, no evidence has been provided by the appellant that this has led to additional expense within the appeal process.
9. Within the Council's rebuttal to this cost application, it states that cycle parking "did not feature as a reason for refusal of the revised scheme." This contradicts the appearance of such a reason on the Decision Notice. However, this has not resulted in additional expense to the applicant as the comment post dates submission of the appeal and no further evidence relating to this comment has been submitted within the appellant's costs application.
10. Although the Council has introduced contradictory statements and therefore behaved unreasonably, I do not consider that this has led to unnecessary or wasted expense, as described in the PPG. In view of the Council's reasons for

³ The London Plan. The Spatial Strategy for London Consolidated with Alterations Since 2011. March 2016.

refusal and my own conclusions regarding the proposal, I do not consider that development which should have been permitted has been prevented.

11. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense within the appeal process, has not been demonstrated. The application for costs is refused.

E Symmons

INSPECTOR