
Costs Decision

Site visit made on 11 February 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

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

Decision date: 8 March 2020

Costs application in relation to Appeal Ref: APP/N5660/X/19/3234849 327 Croxted Road, London SE24 9DB

- 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 Alex Lewis 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 a rear facing dormer with two front roof lights.
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Decision

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

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 is seeking costs on the grounds of the Council's unreasonable behaviour in dealing with the application the subject of the appeal. The same application has been submitted twice and granted on the second occasion. This confirms that the Council's approach to dealing with the first application was flawed.
4. The Council has accepted this and has justified their approach in dealing with cases of this type in the light of Class B of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). GPDO and how their interpretation of Class B has evolved in the light of appeal decisions.
5. As set out in my main decision an appeal for 54 Natal Road was issued in July 2018 after which the Council reviewed its approach to dealing with similar cases. Subsequently, it determined the first application for 327 Croxted Road in accordance with its adopted procedures and in accordance with its interpretation of the conditions attached to Class B. However, an Inspector adopted a different approach in dealing with the 39 Finsen Road case, although at the time the Council had clearly had regard to relevant material considerations, including relevant technical guidance and other decisions. In the light of that appeal decision, the Council again reviewed its interpretation of Class B.
6. The second application for 327 Croxted Road was subsequently approved in accordance with the Council's evolved interpretation of Class B. I do not accept

that the two different decisions for the same scheme are a procedural error but rather resulted from the Council's correct understanding that the circumstances of interpreting Class B had changed over the passage of time. Indeed, I applaud the Council's approach of recognising that their original interpretation should change and evolve in the light of appeal decisions and subsequently revisited the proposal for 327 Croxted Road when the second application was made.

7. The Council's approach in this regard is supported by the findings of the Inspector who dealt with the appeal at 39 Finsen Road who acknowledged that appeal decisions are a significant material consideration which Councils should take into account. To ignore comparable cases and appeals would amount to unreasonable behaviour. Indeed, the application for costs in the 39 Finsen Road was dismissed in recognition of the fact that there is room for a change to the interpretation of statute.
8. The proposal the subject of this appeal is a single discreet operation that joins the main roof of the house to the roof of the original outrigger. Therefore, the conditions and relevant exceptions set out in B2 could be considered relevant to the proposal.
9. The appellant also contends that the Council's interpretation of the GPDO changed on the basis of two appeal decisions. There is insufficient evidence before me that this is correct. Rather, the Council's Appeal Statement states that it undertook a review of all appeal decisions on comparable cases including those in other local authority areas. It is clear to me that the Council's stance changed in the light of other cases across London.
10. In dealing with the application, the Council considered the proposal failed to meet conditions (b)(ii)(aa) and b(ii) because the development did not represent an extension which involved the enlargement joining the original roof to the roof of a rear or side extension because the proposal was not for an L-shaped extension which would allow the proposal to be exempt from the conditions. The appellant also contends that the Council's approach is perverse and is tantamount to removing Class B permitted development rights from residential properties. That does not appear to me to be the case. The Council's decision was clearly on the basis of there being a lack of specific Technical Guidance on every eventuality, including the circumstances of the appeal property. Furthermore, the fact that there seem to be different interpretations of legislation and Technical Guidance illustrate the range of approaches taken by local authorities across the country and the need to evolve interpretation of guidance and legislation over time. This is what the Council has done in this case.
11. It is also argued that the Council has behaved unreasonable by not being consistent in the way it has applied its stance when dealing with Class B cases. The examples used by the appellant to demonstrate the Council's alleged inconsistency are not directly comparable to the circumstances of the appeal site and the proposal. For example, to my knowledge they do not have outriggers where the eaves level is higher than that of the original property and the construction of the dormer would result in the removal of a large section of eaves in excess of one metre in length. It has also been drawn to my attention that the cases referred to by the appellant have been dealt with in accordance with the Council's latest interpretation of Class B. As such, there is

insufficient evidence before me to show that the Council's approach has been inconsistent. Instead, I find that it has evolved over time.

12. Finally, the appellant argues that the Council has applied a narrow approach to the consideration of relevant appeals in this case. However, the Council's stance has changed in the light of different appeal decisions. The appeal cases to which my attention has been drawn show that such cases are based on complex consideration of a range of considerations which in turn may be supported by different appeal decisions. In any case each appeal should be determined on its own merits taking into account the specific circumstances of the site. Therefore, although it may be said that the Council's approach was rather narrow, I do not consider the approach was unreasonable, but rather one that was based on appeal decisions at the time.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A A Phillips

INSPECTOR