The Planning Inspectorate

Costs Decision

Site visit made on 16 December 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 12 March 2020

Costs application in relation to Appeal Ref: APP/A5270/C/19/3229603
25 Sutherland Road, West Ealing W13 0DX

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by London Borough of Ealing for a partial award of costs against Mr Vaid.
- The appeal was against an enforcement notice alleging without planning permission, the erection of a rear roof extension.

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The Council considers that the appellant has acted unreasonably in pursuing a ground (a) appeal which relates to the planning merits of the development when the same development has already been the subject of an appeal decision made pursuant to Section 78 of the Town and Country Planning Act 1990 in April 2018 when the appeal was dismissed.

4. An example from the Guidance quoted by the Council where an appellant may be at risk of costs is, where an appeal follows a recent appeal decision and an Inspector decided that the proposal was unacceptable "and circumstances have not materially changed in the intervening period." The Council is of the view that the appellant has not put forward any material changes and that in failing to withdraw ground (a) which relates to planning merits, the appellant has acted unreasonably.

5. The appellant, however, considered that the grant of planning permission in September 2018 for a lesser scheme represented a significant change in circumstances. The appellant had sought to address the previous Inspector's comment that he was unable to compare the development with a potential fall-back position. The appellant's argument relies upon there now being a potential fallback in the form of the lesser scheme that was not before the previous Inspector.

6. The Council states that the appellant did not state why the scheme was now policy compliant and there were no changes to the material planning considerations on site. However, the appellant's argument was that the potential fall back represented a material change rather than any changes on the ground or to policy.

7. In dismissing the appeal, I have found that the development is materially different to the lesser scheme. Nevertheless, the assessment of whether or not the lesser scheme and the existing development are materially different is a matter of planning judgement. I therefore do not consider that the appellant has acted unreasonably in pursuing a ground (a) appeal.

Conclusion

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

E. Griffin

INSPECTOR