The Planning Inspectorate

Costs Decision

Site visit made on 22 June 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2020

Costs application in relation to Appeal Ref: APP/N1920/D/20/3246575
176 Mutton Lane, Potters Bar, EN6 2AW

- 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 Lion Rabinowitz of the Biala Synagogue Trust for a full award of costs against Hertsmere Borough Council.
- The appeal was against the refusal of planning permission for erection of two-storey side extension with alterations to the roof form and a single storey rear extension.

Decision

1. The application for an award of costs is partially allowed, set out in the terms below.

Reasons

2. Paragraph 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. Paragraph 16-049-20140306 of the PPG states that Local planning authorities are at risk of an award of costs if they behave unreasonably. Examples include 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, failure to produce evidence to substantiate reasons for refusal, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

4. The costs application sets out a number of grounds upon which the appellant considers the Council acted unreasonably. These grounds relate to it preventing and deliberately delaying development, not assessing the application with the correct proposal description in mind and acting contrary to Inspector's views in previous decision letters.

5. It is clear from the timeline of events over the course of the consideration of this application, the application was not determined in a timely manner. There appears to have been long periods where following information received from the appellant, the Council appears not to have communicated with the appellant. There is no justifiable explanation put forward by the Council for the extensive determination period.

6. The delays demonstrate unreasonable behaviour by the Council. However, the appellant was entitled to, but did not lodge an appeal during this part of the application process. Whilst there were some costs to the appellant of seeking to get a decision issued by the Council, these are not costs incurred by making this appeal.

7. There appeared to be confusion on the part of the Council in respect of the description of the development. This was clarified by the appellant in correspondence between 13 July 2018 – 18 July 2018. However, the Council amended the description without the appellant's agreement and included reference to a two storey rear extension. This is unreasonable behaviour.

8. There is no specific reference to a two storey rear extension in the Council's reason for refusal. However, it starts by stating '*Due to the unauthorised nature of the existing extensions…'* and this is referenced on occasion in the delegated assessment. Notwithstanding the concerns about the description, based upon the Council's technical assessment, it appears it has reached a conclusion about the scheme on the proposed plans that were before it and before me. Therefore, whilst there were costs to the appellant of seeking clarification of the description during the determination of the application, it is not demonstrated the incorrect description in itself resulted in costs incurred by making this appeal.

9. The appellant alleges the Council acted unreasonably by not considering previous planning decisions at the appeal site (APP/N1920/C/16/3164803) and next door at No. 174 (APP/N1920/D/16/3152440). The appellant asserts that in-light of these, the Council should have reached different conclusions in respect of the distance to the boundary, width of the extension, the set back from the front wall, and the set down from the roof ridge. I shall consider each of these below.

10. The scheme at the neighbouring No. 174 appears to set out a 1m separation from the plot boundary. Therefore, it differs from the scheme before me. The requirement is set out in Part E (2006) of the Council's Planning and Design Guide Supplementary Planning Document. For these reasons, it does not appear unreasonable behaviour for the Council to apply and find some conflict with its policies in this regard.

11. In approving the scheme at No. 174 the Inspector acknowledged the conflict with the requirement to be less than half the width of the dwelling and be set back from the front wall. However, the Inspector concluded that in the context of Nos. 170 and 172, the requirements were not appropriate, and it would not result in a conflict with the development plan and Framework. The Inspector for No. 174 did not consider a set down from the ridgeline necessary and was unclear whether it was even applicable to that scheme. I have reached similar conclusions for this appeal scheme.

12. I have found that the development is not harmful to the character and appearance of the host dwelling or area from a lack of set down, set back, or being greater than half the width of the main dwelling. Notwithstanding the previous Inspector's decision, in its delegated report the Council has not addressed those matters in relation to the findings of the previous Inspector and justified finding differently. This constitutes unreasonable behaviour. Contesting these matters are likely to have led to the appellant incurring unnecessary and wasted expense in the appeal process. I therefore conclude

that a partial award of costs, to cover the expense incurred by the appellant in contesting these matters is justified.

Costs Order

13. 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 Hertsmere Borough Council shall pay to Mr Lion Rabinowitz of the Biala Synagogue Trust the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the appeal in respect of the requirements to be less than half the width of the dwelling, be set back from the front wall, and be set below the roof ridgeline.

14. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Dan Szymanski

INSPECTOR