
Costs Decision

by **M Seaton DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 July 2020

Costs application in relation to Appeal Ref: APP/W5780/D/20/3246724 47 Mossford Lane, Barkingside, Ilford, IG6 2JA

- 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 Mrs Nicola Thorpe for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of planning permission for a single storey rear extension and loft conversion with rooflights.
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Decision

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

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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably by failing to have regard to a valid fallback position, and to accurately and consistently assess the proposed development in the context of other similar development allowed elsewhere in the borough and Mossford Lane. It is also held that the Council has failed to adequately substantiate its reason for refusal and has ultimately prevented or delayed development which should clearly have been permitted.
4. I have carefully considered the Council's contention that it was quite entitled to assess the appeal proposals against the guidance set out within the Redbridge Housing Design Supplementary Planning Document (SPD) adopted September 2019, and I would not disagree with this as the SPD is clearly a material consideration. However, the absence of any analysis of the impact of the existing extant planning permission (*LPA Ref: 4873/18*) for a single storey rear extension from October 2019, and the grant of prior approval (*LPA Ref: 4347/19*) for a 4.5 metre single-storey extension in December 2019, is a significant and critical omission from the Council's reasoning.
5. In both instances, these decisions represented valid fallback positions and material considerations against which the appeal proposals should have been assessed. Even allowing for the differences in scale and form of the two schemes from the appeal proposal, these decisions clearly established a realistic baseline of depth of development on the appeal site. The consequence

of these decisions is that had they been taken into account, it is reasonable to conclude that planning permission would have been forthcoming. The Council's failure to undertake this exercise patently represents unreasonable behaviour and has effectively delayed a development which should have clearly been permitted.

6. Turning to other matters, I have had regard to the Council's failure to identify the neighbouring property at No. 49 Mossford Lane as having been previously extended but given that this extension appears to be at the side of the property rather than the rear, this was not a critical inaccuracy.
7. With regards consistency of decision-making and the basis for the assessment against the character and appearance of the area, I do accept that the Council's analysis of the local context was concise and did not refer with any particular detail to existing development within the vicinity, relying instead upon a generalised assertion related to the scale of extensions on Mossford Lane. Nevertheless, having assessed the proposed development on its own planning merits, I do not consider that the form and scale of other extensions in the area was the determinative factor in my decision-making.
8. Despite the brevity of the Council's reasoning, I consider on balance that sufficient efforts to substantiate the reason for refusal against the Development Plan were made in this instance. However, the failure to fully consider all material planning considerations was a critical omission and flaw in the Council's decision-making, which on its own is sufficient to justify the conclusion of unreasonable behaviour by the Council.
9. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that this would warrant a full award of costs.

Costs Order

10. 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 the Council of the London Borough of Redbridge shall pay to Mrs Nicola Thorpe the full costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council of the London Borough of Redbridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Seaton

INSPECTOR