



Costs Decision

Site visit made on 28 July 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2020

Costs application in relation to Appeal Ref: APP/T5150/W/20/3248161 112 Herbert Gardens, London NW10 3BP

- 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 Premji Versani for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for conversion of a single dwelling at 112 Herbert Gardens into two flats.
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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 (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. One of the aims of the costs regime noted within the PPG is to encourage Local Planning Authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and to not add to development costs through avoidable delay¹. In cases where an appeal is allowed following a failure to determine an application within relevant time limits, the PPG goes on to explain that the local planning authority may be at risk of an award of costs if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination, and better communication with the applicant would have enabled the appeal to be avoided altogether². However, costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage.
4. The applicant contends that the Council's failure to determine the application within the prescribed period or agree an extension of time was unreasonable, and that the Council did not respond to multiple contact attempts.
5. The Council has not responded directly to this costs application, but within its appeal evidence, comments that the applicant was aware through phone calls and emails that the proposal was considered unacceptable. I have not been provided with details of the timing or discussion of any phone calls, and the copies of the email from the Council submitted within its evidence provides

¹ Paragraph 028 Reference ID: 16/028/20140306

² Paragraph: 048 Reference ID: 16-048-20140306

little explanation of the nature of any concerns. However, the Council's statement suggests these pertain to inaccuracies in the submitted plans, the standard of accommodation within the ground floor flat and the suggested parking and access arrangements.

6. While I also saw that the submitted plans do not reflect the development currently present on the site, the email trail at Appendix 1 and 2 of the Council's statement includes confirmation from the applicant that the development would revert to comply with the layout shown on the submitted drawings. Indeed, the Council's statement confirms this with regard specifically to the arrangement of doors to the front of the building. The Council has offered no convincing explanation why it was unable to determine the application on the basis of the proposal shown on the submitted drawings, and I am therefore unclear why this should have resulted in delay to the determination of the application.
7. Furthermore, the Council's submitted evidence is cursory, lacking specific detail to support the suggested harm and why the development is considered unacceptable. A slight shortfall in the internal area of the dwelling is suggested, but while I note that Policy DMP18 of the Development Management Policies 2016 (DMP) which was submitted with the Council's appeal questionnaire refers to compliance with internal space standards, there is no mention of this policy within the appeal statement. Instead, reliance is placed only on Policy DMP1 of the DMP which includes a general requirement for a high level of internal and external amenity, and no explanation is provided to substantiate the assertion that the internal area of the dwelling would fail to secure this. Additionally, the suggestion that harm would result by reason of access to rooms via a long corridor with natural light provided only by a rooflight does not stand up to scrutiny given particularly the nature of the corridor as circulation space rather than an important element of the accommodation overall. I therefore find the Council's conclusion that the proposal would not comply with Policy DMP1 to be unsupported by evidence and thus unreasonable.
8. The Council's second area of concern relating to parking and access refers to advice within local guidance documents which do not appear to form part of the development plan³. The Council was entitled to take these into account as a material consideration offering a guide as to what might be acceptable. Nevertheless, as guidance, these documents alone are not determinative. I have found no indication within the evidence that the Council considered whether or not any harm to highway or pedestrian safety, parking, the character or appearance of the site or management of surface water would actually occur. I have found no such harm, and therefore no reason to withhold permission.
9. For these reasons, and bearing in mind that I have allowed the appeal, I find that the Council have prevented development which should clearly have been permitted, having regard to its accordance with the development plan and other material considerations. There were no substantive reasons to justify delaying the determination, and I therefore consider that the Council has acted unreasonably, leading the applicant to submit the appeal and incurring costs of related to the appeal process.

³ Domestic Vehicle Footway Crossover Policy 2013 and Residential Extensions and Alterations Supplementary Planning Document 2 2018

10. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and I find that a full award of costs is justified.

Costs Order

11. 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 Brent shall pay to Mr Premji Versani, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Bowyer

INSPECTOR