The Planning Inspectorate

Costs Decision

Site visit made on 21 July 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2020

Costs application in relation to Appeal Ref: APP/Z4310/W/20/3248244
54-56 Kensington, Liverpool L7 8XB

- 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 Ronaldo Garcia (Ron Sullivans Limited) for a full award of costs against Liverpool City Council.
- The appeal was against the refusal of planning permission for a development described as: 'Alterations and upgrading of 2no. existing terraced HMO properties. Total number of bedrooms to be increased from 6no. to 8no. bedrooms in each terrace. Proposed loft conversion with new dormer to rear of both properties. Provision for bicycle stands'.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. The PPG advises that local planning authorities (LPAs) are at risk of an award of costs for vague, generalised or inaccurate assertions about a proposal's impacts which are unsubstantiated by any objective analysis, for not determining similar cases in a consistent manner and for 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.

3. The Council's submissions clearly set out its concerns regarding the proposed development and its effect on the appeal building and the Kensington Fields Conservation Area (KFCA). In doing so, the Council refers to the absence of existing dormers on the appeal terrace, the smooth sloping roofs of the KFCA and the specific characteristics of the proposed dormer that it considers would be harmful to that existing character. The Council has thus clearly explained and substantiated its reason for refusal with reference to the characteristics of the existing building, its surroundings and the specific development proposed. Accordingly, it has not behaved unreasonably in that regard.

4. The appellant refers to rear dormers having received planning permission on other terraces since the KFCA was designated. However, from the limited information before me I cannot be certain that the details of those schemes or the circumstances in which they received permission were directly comparable

to those in the current appeal. The Council has acknowledged the presence of other dormers but has identified distinctions between those existing features and the dormer now proposed, and has specifically referred to the size of the proposed dormer and the unaltered form of the appeal building's rear roof slope in justifying its reason for refusal in this particular case. It will also be seen from my decision that I agree with the Council's conclusion regarding the harm that would arise, despite the presence of other dormers nearby. Consequently, I do not find that the Council has behaved inconsistently or unreasonably in refusing permission in this case.

5. There was some delay between the submission of the application and its determination which arose as a result of an error whereby the site's location within a conservation area was not initially identified. I recognise the appellant's frustration regarding the delay, and references made to lost rental income and costs relating to the deterioration of the property having arisen as a result. However, the PPG makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal.

6. It will be seen from my decision that I agree with the Council's conclusion regarding the harm to character and appearance and to the KFCA in this case. Therefore, the delay in the Council's determination of the application has not ultimately delayed a development which should clearly have been permitted or led to the appellant incurring unnecessary or wasted expense in the appeal process as a result of an appeal which could otherwise have been avoided. The Council's actions therefore do not amount to unreasonable behaviour in the terms of the PPG.

7. The Council appears to have initially indicated that the application would be recommended for approval. However, the evidence indicates that advice was given before the conservation officer's comments objecting to the proposal were received. Those comments may have been received at a relatively late stage owing to the conservation area status not having been identified when the application was originally submitted. However, an LPA is obliged to have regard to all relevant material considerations and is entitled to review its case prior to determination in the light of representations and responses received during the application process. Therefore, its actions in that regard were not unreasonable.

8. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case.

Jillian Rann
INSPECTOR