
Costs Decision

Site visit made on 15 October 2020

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 November 2020.

Costs application in relation to Appeal Ref: APP/X5990/W/20/3248229 26 Macroom Road, London W9 3HY

- 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 Globalter S.A. for a full award of costs against Westminster City Council.
 - The appeal was against the refusal of planning permission for the 'erection of a single storey side extension at first floor level to provide one self-contained (two bedroom) residential unit (Class C3); together with bicycle parking facilities, refuse and recycling storage'.
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Decision

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

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.
3. The Claimant's application is based on the following grounds:
 - That the Council prevented or delayed development which clearly should be permitted having regard to its accordance with the development plan, national policy and any other material considerations;
 - That the Council failed to provide substantive evidence to substantiate each reason for refusal;
 - That the Council advanced vague, generalised or inaccurate assertions about the proposal's impact, unsupported by any objective analysis; and
 - That the Council failed to grant a further planning permission for a scheme that is the subject of an extant or recently expired planning permission where there has been no material change in circumstances.
4. The Claimant argues that in refusing to grant planning permission for the appeal proposal, the Council reached a substantially different decision to that taken when granting planning permission for a physically similar scheme in 2012 (Ref. 12/02243/FULL). I understand that the earlier scheme was not assessed against the National Planning Policy Framework, but it was assessed against the same development plan policies as the appeal proposal.
5. The Claimant explains that amended plans were submitted to the Council before the application which is the subject of the appeal was formally

determined. The Council does not dispute this but has not provided any explanation as to why its decision was based on the plans originally submitted with the application rather than the later plans. In any event, the original plans showed a fenestration which is markedly different to that of the previously approved scheme. In addition, the Council has explained that during the assessment of the appeal proposal, it transpired that either the 2012 drawings were not correct or the boundary treatment between the application site and Croxley Road properties was reported incorrectly; and this led to an erroneous assessment of the impact of the earlier scheme on the living conditions of the nearest dwellings of Croxley Road.

6. Consistency of decision making is critical to ensuring confidence in the planning process. However, it seems to me that there were some material differences between the previously approved scheme and the appeal proposal considered by the Council. Moreover, the earlier planning permission expired in 2015, which is some time ago, and therefore it does not represent a realistic fallback position. Accordingly, the earlier planning permission can be afforded only limited weight in the decision making process and the Council was within its rights to consider the appeal proposal afresh. Furthermore, if an error was made during the assessment of the previous proposal, this is regrettable. However, it does justify the subsequent grant of planning permission for a physically similar scheme, particularly if the previously approved scheme is now time expired.
7. I found the Council's three reasons for refusal to be clear and concise and each matter at hand involved a significant element of subjective judgement. I did not find the Council's arguments relating to the appearance of the proposed extension or its impact in terms of privacy and access to natural light to be persuasive, but they were clear, well articulated and sufficiently substantive. I did, however, agree with the arguments advanced by the Council in terms of the harmful effect of the appeal proposal on the quality of the outlook from the nearest residents of Croxley Road and that this conflicted with development plan policy.
8. In light of the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Fitzsimon

INSPECTOR