



Costs Decision

Site visit made on 27 October 2020

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Costs application in relation to Appeal Ref: APP/C5690/D/20/3247098 90 Malpas Road, London, SE4 1BU

- 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 Matt Kiteley for a full award of costs against the London Borough of Lewisham Council.
 - The appeal was against the refusal to grant planning permission for a Mansard roof extension.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG), advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Applicant submits that the Council has, in essence, made an erroneous decision refusing the proposal on design grounds with no substantive reasoning for their decision; it has not been properly considered in light of the National Planning Policy Framework (the Framework), and that the Council have failed to take into account the fallback position and the advice contained in the Framework to support development by using airspace.
4. As the appeal site forms part of a group of locally listed buildings, it is, as a matter of fact, a non-designated heritage asset and is therefore of historical significance, despite the fact that the Applicant considers it to be 'unjustified local listing'. Paragraph 197 of the Framework explains the approach to be taken when considering the effect of development on a non-designated heritage asset.
5. The Council have clearly recognised the significance of the heritage asset within their Delegated Report, and that development should be sensitive to its significance. To this end, I have also found in favour of the Council and concluded the scheme would not represent appropriate development given its scale, siting and context.

6. I consider the Council's findings on the matter have been adequately reasoned within their Delegated Report, concentrating on its effect on the dwelling and the area.
7. There may be a possibility that the Applicant can develop the site by exercising the permitted development rights of the property. However, the Council can only reasonably assess the fallback position when details are presented to them to allow a comparison to be drawn. As this has not occurred, the Council's omission of responding to the matter was not unreasonable.
8. The Framework supports the use of airspace above residential buildings. However, this is caveated by a requirement that such development should be consistent with the prevailing height and form of neighbouring properties and overall street scene. As I have found, the proposed development is not consistent with the character of the area where there is a continuity of original roofscape to this group of houses, contributing to their character. The Council's assessment describes the character of the area and this has resulted in their findings that the proposal would lead to unacceptable harm arising as a consequence.
9. Therefore, based on the above, none of the types of behaviour which may give rise to a substantive award under the PPG have been established. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Alison Scott

INSPECTOR