
Costs Decision

Site visit made on 27 October 2020

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Costs application in relation to Appeal Ref: APP/A5270/W/20/3248278 Rear of 133 & 133A The Broadway, Southall UB1 1LW

- 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 B S Dokal for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the refusal of planning permission for the erection of a 1st floor rear extension for ancillary office use.
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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.
3. The appellant's claim is that the proposed development overcome the reasons why the previous appeal was dismissed¹. In respect of harm to the living conditions of the occupiers of 131 The Broadway, the assessment of the previous appeal specifically concerned with the effect of the proposed extension on the levels of daylight reaching first floor windows and the outlook from these openings. At the time the previous appeal was determined, these windows were believed to serve habitable rooms but this is no longer the case. No concerns were raised by the Council or the Inspector to the previous proposal because of unacceptable harm being associated with the use of the rear amenity space by the neighbouring occupiers. Accordingly, because the previous and current appeal schemes are of a similar scale and siting, the appellant's claim is based upon the Council not determining similar cases in a consistent manner.
4. The Council has not provided any additional evidence as part of the appeal and no response to the appellant's cost claim. However, the Planning Officer's report does provide some information about the Council's approach to the assessment of the appeal application. This principally focused upon the effect of the proposed extension on the amenity space, including the cumulative impact with the addition to the rear of 127 The Broadway.
5. Although there is reference in the Planning Officer's report to the previous appeal proposal being an oppressive addition which would be overbearing to

¹ APP/A5270/W/16/3158140

the occupiers of No. 131, this is not qualified by reference to the Inspector's assessment which focused upon the rear first floor windows. No commentary is provided in the Planning Officer's report explaining whether the amenity space was previously a material consideration. If not, whether as part of the appeal or costs procedures, there is insufficient evidence from the Council explaining why the claimed unacceptable harm to this space justified refusing the appeal application. It is unclear why the Council departed from the assessment, or omission of an assessment, made by the previous appeal Inspector.

6. By reason of the similarities between the previous and current appeal scheme, and in the absence of any additional information, I agree with the appellant that this is a case where a consistent approach should have been taken to decision making, or at least a full justification provided to depart from the Inspector's previous assessment. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. 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 Ealing shall pay to Mr B S Dokal, 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.
8. The applicant is now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D J Barnes

INSPECTOR