
Costs Decision

Site visit made on 5 January 2021

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Costs application in relation to Appeal Ref: APP/N5090/D/20/3260814 19 The Reddings, Mill Hill, London NW7 4JN

- 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 Mrs Michal Strassburg-Sapir for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for hip to gable roof extension on the side elevation and rear dormer roof extension with Juliette balcony and 3no front facing rooflights.
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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 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 states that the Local Planning Authority (LPA) was unreasonable and unnecessary or wasted expense was incurred as the Council's assessment of the application failed to take into account a fall-back position on the appeal site, including case law¹ and the appellant's option to part demolish the existing hipped roof to create a hip to gable roof and build a rear roof dormer extension using the Lawful Development Certificate issued by the LPA in 2020². The appellant states that this proposed appeal scheme would be identical to the proposed fall-back extension issued with a Certificate of Lawfulness by the LPA, with the exception of a flat roofed two storey side extension and as such is a material consideration in the assessment of this case.
4. The PPG sets out a non-exhaustive list of examples of unreasonable behaviour on substantive grounds³ which may put an LPA at risk of an award of costs. Relevant to the case of this application, it states 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 could be considered unreasonable.

¹ Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

² 20/0174/192

³ Planning Practice Guidance: Paragraph 049 Reference ID: 16-049-20140306

5. Whilst subject to a separate Decision, I found that the fall-back position on the appeal site and the appellant's option to part demolish the existing hipped roof to create a hip to gable roof and build a rear roof dormer extension using the Lawful Development Certificate was a material consideration to which I attached significant weight.
6. It is clear from the content of the officer's delegated report that, whilst the LPA did not make an assessment of this fall back position and could be judged to have failed in this respect, the Certificate of Lawfulness is referred to in the report. The officer's report sets out the LPA's views on how the proposal would affect the character and appearance of the host property and the area, having regard to the development plan, national policy and other material considerations. The overall conclusion of the officer's report clearly indicates that all material considerations were taken into account in making a decision.
7. It will be seen from my appeal decision that I do not agree with the LPA on the merits of this development. However, these are matters of planning judgement based on an assessment of fact and degree of the effects on the main issues relating to the development. The LPA was entitled to form its own views even though for the reasons set out in my appeal decision I have reached a different conclusion on the planning merits of the case. Nonetheless for the reasons that I have given, I cannot agree that the LPA has acted unreasonably in this case.
8. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified.

David Troy

INSPECTOR