



Costs Decision

Site visit made on 8 December 2020 by Thomas Courtney BA(Hons) MA

Decision by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2021

Costs application in relation to Appeal Ref: APP/A5840/D/20/3258208 6 Canning Cross, London SE5 8BH

- 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 Dominic Charles and Eleanor Hearder for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for the refurbishment and rear extension at basement, ground and first floor levels to the rear (East).
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, 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. It goes onto state that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal, by unreasonably refusing planning applications.
4. Regarding the first reason of refusal, the applicants assert that the Council made vague assertions and unreasonably considered the scheme to be materially different, on account of the relatively minor difference size of the proposal, when compared with previous proposals at the site. Whilst the proposal is similar and incorporates elements from previous schemes, I concur with the Council that it is indeed materially different on account of the increase in depth of the rear extension, albeit a marginal increase. I agree with the Council that the delicate context of the site, due to the proximity of the neighbouring properties, means that small incremental increases can still have an impact and should be treated cautiously. I find that this was sufficiently well explained in the officer report.
5. However the officer report is unclear and contains confusing statements regarding the effects of the development on the living conditions of the occupants of nos. 140, 142 and 142A Camberwell Grove. In particular, paragraph 29 of the officer report seems to imply that the glazing at ground level would be acceptable as it is no different to what was previously approved, yet the report later states the development would result in overlooking, which

is carried through into the formal decision notice. Whilst this is poor practise the overall thrust of the Council's concerns are apparent, and which I share.

6. The report also fails to consider the effect of a 2m boundary fence, which was considered in the previous proposals. However, such a fence was not proposed on the plans or in the design and access statement and, despite being suggested by the Council previously, it is not the Council's role to suggest methods to overcome harm. In any case I have found that a rear boundary wall or fence would not fully mitigate the effects of the development.
7. The assessment of the amenity space is very briefly addressed in the report. The area identified in the appellant's grounds of appeal show that it would be larger than that which would have been provided in the 2018 scheme and to which the Council did not object. This demonstrates a failure to consider similar issues in a consistent manner. However it was a secondary matter in this reason for refusal. Overall, on this reason for refusal, I do not consider the Council acted unreasonably.
8. Regarding the effect of the development on the Camberwell Grove Conservation Area, the officer report provided very scarce evidence to support the view that the development would be unacceptable and harmful to the adjoining key unlisted buildings to the rear of the appeal site, and instead relied more on a comparison with a previous scheme. The Council did not offer a comprehensive account of the appeal site's context from a heritage perspective, failing to take into consideration the numerous modern elements and contemporary additions in the direct vicinity of the site. These include, amongst others, the sunken basement to the rear of no. 140 and its metallic spiralling outside staircases, the ground floor rear extension at no. 142A, and the new dwelling at 25 Canning Cross. I consider the reason for refusal to be unsubstantiated and do not clearly state the degree of harm the proposal would have on the significance of the conservation area.
9. Without a more comprehensive assessment it was unreasonable for the Council to refuse the application on this basis, notwithstanding their approach to the previous applications for the site. As such the applicant's costs in addressing this reason for refusal was wasted expense.
10. In summary, the officer's report was not comprehensive, particularly in respect of the Council's assessment of the development's impact on the conservation area, and this is unreasonable. Although I have dismissed the appeal and find that the Council did not prevent development that should clearly be permitted, they failed to properly substantiate a reason for refusal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated, but only in so far as it relates to the second reason for refusal.

Thomas Courtney

APPEAL PLANNING OFFICER

Inspector's Decision

12. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application is partially allowed.

Costs Order

13. 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 Southwark shall pay to Dominic Charles and Eleanor Header, the costs of the appeal proceedings described in the heading of this decision but only in so far as they relate to the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Southwark, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Owen

INSPECTOR