



Costs Decision

Site visit made on 23 March 2021

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2021

Costs application in relation to Appeal Ref: APP/U5360/Y/20/3255225 114 Southgate Road, Hackney, London N1 3HY

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Sarah Crowe for an award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of listed building consent for the erection of a single storey rear extension, new internal WC at ground floor level, replacement windows at rear elevation, relocation of rainwater pipe at the rear elevation, relocation of trees at the rear garden, and associated landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded against a party at appeal where that party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The Appellant's claim is primarily procedural, relating to the Council's actions during the listed building application process, rather than during the appeal process itself. In summary, it asserts that the Council's behaviour and actions in determining the application were unreasonable and that had it acted differently, an appeal and the costs involved for the appellant could have been avoided. Whilst the PPG¹ states that costs can only be awarded in relation to unnecessary or wasted expense at an appeal, behaviour and actions at the time of the application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. Accordingly, I have considered the main points of the Appellant's claim and the Council's responses below.
4. Firstly, it is alleged that the Council did not co-operate with the appellant nor handle the application with adequate care and responsibility, leaving virtually no time to deal with minor amendments to the proposals before determining the application and pushing to have it withdrawn, rather than seeking to resolve the outstanding matters of objection. I agree that the email exchanges between the Council and the Appellant from 2-6 April 2020, seeking to resolve objections to the replacement windows and the loss of the chimney breast, were late in

¹ PPG Paragraph: Reference ID: 16-033-20140306

the application process, immediately prior to its determination on 7 April 2021. However, from other email correspondence it is evident that at least some of these matters were under discussion at a much earlier stage. I refer, in particular, to the email from the Council's Conservation and Design Officer on 13 March 2020, contained in Appendix 1 to the Appellant's appeal statement, which appears to be promoting the retrofitting of draft proofing, as an alternative solution to the replacement of the windows. Further, the Planning Officer's report and its appeal statement acknowledge that the Council's concerns over the window configuration were addressed by the amended plans showing a 6 x 6 arrangement, so this was not a material consideration in its decision. I am also clear that even if replacement windows of an acceptable design could have been agreed with the Council before the application was determined, it would not have avoided an appeal, since the Appellant had made clear², that they intended to appeal a refusal of the proposal to remove the chimney breast.

5. Secondly, the Appellant asserts that Council officers acted in a dishonest manner, misquoting facts about what was requested of the applicant during the application process regarding a change to single glazed windows. However, from the evidence before me, whilst the Council did not mention the use of double glazing in its email to the Appellant on 2 April 2020, it is clear that the Council's concern about the use of double glazing was raised during a site visit. Based on the email of 13 March 2020 referred to above, the reference to the advice of Historic England (HE) and a specialist window contractor was for the purposes of retrofitting of draft proofing rather than double glazing. The fact that the HE advice note refers to slim-profile double glazing does not mean Council was endorsing it for the appeal property.
6. Thirdly, it is asserted that the Planning Officer's report provided false information by stating that there was no relevant planning history, in that there are precedents for the removal of chimney breasts and creating a new sash window with a 2 x 2 glazing configuration at no. 110 Southgate Road. However, as I understand it, the section on 'relevant planning history' in the delegated report is to identify any relevant previous applications or cases on the appeal property itself, not on other properties in the area. I do not regard this as concealing the existence of similar proposals on other dwellings in the terrace. Indeed, the report refers to the extension at no. 110 and acknowledges the mix of window designs across the rear elevation of the terrace, but determines that these do not create a positive precedent in favour of the appeal proposals.
7. Fourthly, the Appellant contends that the Council's refusal of the proposals on the grounds of the size and appearance of the rear extension were at odds with officer views expressed during the application process, which indicated the Council could grant consent for the extension. Whilst such actions on the part of the Council may undermine the confidence applicants can place in the views of officers, ultimately those views are informal and do not constitute the formal decision of the Council, which is contained in the decision notice and the report that explains the reasons for the decision. Views can change during the processing of an application, which appears to have been the case here. The acid test is whether the Council was able to substantiate the reasons for refusal. In this regard, the PPG³ defines unreasonable behaviour by a local planning

² Email from joao@pencilman.co.uk on 6 April 2020 at 17.00 hours

³ PPG Paragraph: 049 Reference ID: 16-049-20140306

- authority as a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. However, the Council has substantiated its reasons for refusal and, as will be clear from my decision on the appeal, I concur with that evidence in respect of the proposed extension. As such, I do not regard the Council's apparent change of mind on this element of the proposal to be unreasonable.
8. Fifthly, the Appellant claims that the listed building application failed a peer review, in that the report was not signed by any of the team leaders. However, the Council has explained that this was an administrative error and that the report was reviewed by the Area Team Leader before the decision was issued. The error does not constitute unreasonable behaviour.
 9. Finally, I have noted that the Council's rebuttal statement to the costs claim refers incorrectly to the appeal being about a proposal for change of use of to a restaurant, rather than the works which are the subject of this appeal. Whilst this is an unfortunate error, which, with greater attention to detail, could have been avoided, it is not determinative of the costs application. It is clear from the heading and first two lines of the statement, that the Council is responding to the costs claim for this appeal.
 10. Overall, therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Hayden

INSPECTOR