
Costs Decision

Site visit made on 19 July 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2021

Costs application in relation to Appeal Ref: APP/Q5300/W/21/3267183 74 Poynter Road, Enfield EN1 1DL

- 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 A Bard for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of planning permission for the conversion of the dwellinghouse into two self-contained residential units (1x1 bed and 1x3 bed) including rear dormer extension, 2 x rooflights on the front roof slope and cycle parking provision.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states the established premise that parties to an appeal normally meet their own costs. However, the PPG also advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and thereby has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
3. The applicant's substantive claim alleges that the Council determined the application taking into account rear extensions that were not part of the proposal and that the Council subsequently and incorrectly partly refused the scheme due to the effect of these extensions.
4. The Council determined that Prior Approval was not required for these rear extensions following its consultation process. The proposal, the subject of my main decision, did not include the rear extensions within the description of development and were shown as 'existing' on the submitted plans. Despite this, it is clear that the Council appraised the effect of the rear extensions as part of its decision-making process.
5. It is not explicitly shown in evidence when the extensions became substantially complete, but in any event, they related to an extant decision when the Council determined the planning application in January 2021. As a result, this should in the least, have formed a significant material consideration. Therefore, the extensions were either an established part of the main building or they represented a substantive fall-back position.

6. The Council has taken the position that the extensions could not be considered as lawful, or afforded any weight in the planning balance, without the benefit of a lawful development certificate (LDC). This position is flawed. The main purpose of LDCs in these circumstances would be to address any ambiguity over the Permitted Development tests. In this case, as the Prior Approval procedure had been followed, there would normally be no need to secure a LDC. The Council is entitled to explore other options if it is of the view that the extensions have not been built in accordance with the details within the Prior Approval application.
7. Consequently, I consider that there was a fundamental defect in the Council's approach to its decision making with respect to Reason for Refusal two. This amounts to unreasonable behaviour. However, in my main decision, I have found that the proposal would conflict with the development plan and have therefore dismissed the appeal. As a result, the error found in the Council's approach to Reason two has had only a limited bearing on the overall outcome of the appeal.
8. Accordingly, it has not been demonstrated that the unreasonable behaviour identified has led the applicant to incur unnecessary or wasted expense as described by the PPG. Therefore, I conclude that an award of costs is not justified, and the costs application does not succeed.

B Plenty

INSPECTOR