
Costs Decision

Site Visit made on 7 September 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Costs application in relation to Appeal Ref: APP/B4215/W/21/3277378 84 Martindale Crescent, Manchester, M12 4WQ

- 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 Manchester City Council for a full award of costs against Mr Kamal Ahmed.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of a single storey rear extension.
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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 (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 applicant submits that the respondent was professionally represented throughout. This professional representation should have knowledge of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO) and the Permitted development rights for householders Technical Guidance 2019 (Technical Guidance) both of which have been in effect for some years.
4. Furthermore, there is no dispute that the rearward projection forms part of the original dwellinghouse. The respondent's statement of case sets out no logical argument why the rearward projection, which forms part of the original dwellinghouse, does not have a side elevation. Taking note of the Technical Guidance, any wall that cannot be identified as a front or rear wall, is a wall forming a side elevation and as such the appeal must fail.
5. The decision was clear and simple, in that to amount to permitted development, the proposal must meet all conditions and limitations. The decision sets out where the proposal fails but it seems clear that the respondent has pursued the appeal without properly considering or interpreting the implications of legislation or taking account of the Technical Guidance that aims to assist in that regard.

6. Following the decision to refuse the prior approval notification and the contents of the delegated report setting out how the decision had been arrived at, the appeal had no reasonable prospect of success. Had the respondent properly engaged in the process and followed the guidance available and the advice to submit a householder planning application, this unnecessary and wasted expense in the appeal process could have been prevented.
7. In response, it is stated that the decision to appeal was not taken lightly or irresponsibly, valid reasons for the appeal have been made in the statement of case, the proposed development does not relate to a side extension and in any event the single storey rear projection would be demolished. The applicant themselves acted unreasonably in refusing the application for prior approval.
8. In addition, it is considered unlikely that planning permission would have been granted should a planning application have been submitted and therefore the only option to achieve a 4 metre rear extension is to appeal. The submission of a planning application would have been an unnecessary and wasted expense when there is no prospect of planning permission being granted.
9. I have addressed the points raised in the respondent's statement of case in my decision letter, where I have concurred with the approach that the Council took, which they had clearly explained in their letter dated 9 June 2021 and in their delegated report. The case put forward in support of the appeal by the respondent does not provide any convincing evidence or counter argument to the well-considered conclusions of the Council. In summary therefore, on application of the legislation set out in the GDPO and with reference to the Technical Guidance, there was no reasonable prospect of the appeal being successful.
10. Whether or not a planning application would be approved and the fact that the submission of such an application would put the respondent to additional expense are not considerations which can have any bearing or influence on the matter to which the appeal related, this being whether the proposal would be permitted development against the provisions of the GDPO. Likewise, speculation relating to the intentions of the legislation is also not relevant when making an assessment against the actual provisions set out within it.
11. Taken as a whole, an appeal has been pursued which had no reasonable chance of success and there was nothing in the submissions of the respondent which could reasonably substantiate the position they have taken. This therefore represents unreasonable behaviour, and it has resulted in unnecessary and wasted expense, as described in the Planning Practice Guidance. Therefore, a full award of costs is justified.

Costs Order

12. 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 Mr Kamal Ahmed shall pay to Manchester City Council, 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.

13. The applicant is now invited to submit to Mr Kamal Ahmed, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Wraight

INSPECTOR