The Planning Inspectorate

Costs Decision

Site visit made on 31 August 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2021

Costs application in relation to Appeal Ref: APP/U5360/C/20/3259040
34 Colvestone Crescent, Hackney, London E8 2LH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Goldmark Properties Ltd for a full award of costs against the Council of the London Borough of Hackney.
- The appeal was against an enforcement notice alleging without planning permission, the erection of a part single, part two storey rear extension, the excavation of a basement and rear lightwell, and alterations to the rear of the property.

Decision

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

Background

2. The Planning Practice Guidance (the Guidance) 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.

Reasons

3. The Guidance provides examples of unreasonable behaviour by a local planning authority which may result in an award of costs against it. These include delays in providing information or other failure to adhere to deadlines, preventing or delaying development which should clearly be permitted and not determining similar cases in a consistent manner.

4. In respect of failing to adhere to deadlines the applicants point out that the Council did not submit its evidence in accordance with the timetable set out in the original start letter. However, a revised timetable was issued, and the Council made its submissions in accordance with the revised timetable. Notwithstanding the applicants' objections to the revision of the timetable and the comments which they have made in their application for costs regarding the Council's processes, the timetable was formally revised. Thus, the Council has not acted unreasonably in failing to meet the deadlines set for the appeal process.

5. It will be seen from my decision that I agree with the Council in its view that the development which has been carried out should not be permitted and that it does not accord with the development plan. On that basis the Council has not

prevented development which should have been permitted or acted unreasonably in that regard.

6. The applicants consider that the Council has acted unreasonably in serving an enforcement notice in relation to works which they describe as being the subject of a planning application which has been approved (Council Ref. 2019/3846). The notice does not only relate to the erection of a part single, part two storey rear extension it also includes associated works in the form of the basement, the lightwell and the alterations to the rear of the building. It will be seen from my decision that I have regarded these works as interdependent as opposed to discrete elements of development. It follows that the development which is the subject of the notice is not the same as that for which planning permission has been granted and the Council has not acted unreasonably in serving the notice in respect of the development as a whole.

7. The applicants also argue that the works concerning the basement/lightwell were carried out under the instructions of the Council's Building Control team. Notwithstanding that building regulations are separate from planning regulations the applicants acknowledge that they were advised by the Building Control officer of the need for retrospective planning permission for the basement and the lightwell. In light of the advice regarding the need for planning permission which was provided by the Council and the fact that the applicants had professional advisers themselves, it has not been shown that the Council acted unreasonably in issuing the notice to relate to works which had been required to be carried out in respect of building regulations.

8. The applicants subsequently submitted a planning application to retain the basement works along with conversion of the loft space and subdivision to provide 5 flats (Council Ref. 2019/1464). This application was refused, as were other applications for a non-material amendment to planning permission 2019/3846 (Council Ref. 2020/3546) and for retrospective permission for the excavation of basement and rear light well (Council Ref. 2020/3517).

9. The applicants argue that the Council's decisions to refuse these applications point to a lack of co-operation on the part of the Council in terms of resolving the basement area works. They also consider that granting planning permission could have negated the need for this appeal. However, the applicants have not submitted appeals against the Council's decisions which they could have done if they considered that the Council's decisions were wrong.

10. Furthermore, it will be seen from my decision that I have not found the works which have been carried out to provide the basement and lightwell accord with development plan. On this basis I do not find that the Council's decisions on the subsequent applications as amounting to a failure to co-operate with the applicants.

11. There is no evidence before me to suggest that the Council has been uncooperative in terms of engaging in a dialogue with the applicants in a more general sense which is also alleged by the applicants.

12. The applicants are also critical of the lack of site visits by Council officers, in particular in relation to their application for a non-material amendment (Council Ref 2019/1464) which they say amounts to a failure to follow due process. Notwithstanding that this is a criticism relates to an application which is not the subject of this appeal, there is no requirement for a site visit to be carried out

in advance of a decision to refuse planning permission or issue an enforcement notice. Whilst it is good practice to carry out a site visit, even accounting for the effect of the Covid-19 pandemic, the Council has not acted unreasonably in deciding not to do so in this case.

13. The applicants consider that the development complies with the Hackney Residential Extensions and Alterations SPD in terms of the proportion of the rear garden which has been retained and they note that the Council did not raise any objections to the development in terms of its impact on living conditions. However, the size of the retained rear garden and the impact on living conditions are not referred to in the Council's reasons for serving the notice. The absence of harm in relation to other impacts of the development and compliance with elements of the SPD does not mean the Council acted unreasonably in issuing the notice for other reasons, as long as they are well-founded.

14. With regard to the need to determine similar cases in a consistent manner, the applicants refer to other examples of basements and lightwells which have been permitted by the Council. However, there is very limited information to demonstrate that the cases are similar to the appeal scheme and the Council says that the particular cases referred to are not in close proximity to the appeal site. On this basis, it has not been shown that the Council has been inconsistent in terms of decision making in relation to similar cases.

15. The applicants have also made reference to matters which relate to the merits of the development in their application for costs. As the related appeal was under ground (a) I have addressed these matters in my decision.

Conclusion

16. For the reasons set out above I do not find that the Council has acted unreasonably. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Sarah Dyer

Inspector