

Costs Decision

Site visit made on 18 October 2021

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2021

Costs application in relation to Appeal Ref: APP/V5570/W/21/3274366 3 Compton Terrace, London N1 2UN

- 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 Laura Wade & Samuel West for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the decision to grant planning permission subject to conditions for the erection of a single storey lower ground floor rear extension to rear lightwell.
-

Costs application in relation to Appeal Ref: APP/V5570/Y/21/3274363 3 Compton Terrace, London N1 2UN

- 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 Laura Wade & Samuel West for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the decision to grant listed building consent subject to conditions for the erection of a single storey lower ground floor rear extension to rear lightwell.
-

Decision

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

Procedural Matter

2. The application for costs does not specify to which appeal it relates. I have therefore considered the application in relation to both appeals and, in order to avoid repetition, have set out my reasoning within a single decision letter.

Reasons

3. Irrespective of the outcome of an appeal, the Planning Practice Guidance (the 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.
4. The application for an award of costs is made on procedural and substantive grounds. The applicants claim that the Council took an unreasonable amount of time to determine the applications that led to the appeal and that its decision left key issues unresolved, resulting in unnecessary costs in the preparation of the appeal and discharge of planning conditions. They recognise that the Covid-19 pandemic has had an impact but consider that the last few months of delay were completely unjustified, and they incurred wasted expense through the preparation of an appeal against non-determination that was, in the end, not

needed because the Council issued a decision. Finally, the applicants are of the view that the Council's reasoning for the imposition of the disputed conditions do not stand up to scrutiny and therefore their imposition was not reasonable or necessary. As a consequence, the applicant alleges that the Council has behaved unreasonably and in doing so this led to the unnecessary and wasted expense of submitting the appeal.

Procedural grounds

5. The PPG indicates that a local planning authority's handling of applications prior to an appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance states that if the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay.
6. The application for planning permission and listed building consent was dated 29 January 2020. The Council acknowledge that it failed to determine the applications within the statutory period and issued its decision on 17 March 2021. Whilst this is highly undesirable, I accept that the outbreak of the Covid-19 pandemic was an unprecedented circumstance which severely hampered the Council's handling of the case. Furthermore, I can see that beyond the statutory deadline there was a considerable exchange of correspondence between the Council and the applicant in order to reach a revised scheme that the Council could support. This resulted in the submission of amended drawings in July 2020, October 2020 and again in December 2020, and at each stage the Council provided feedback on these submissions. I also note that the applicants agreed an extension of time to allow iterations of the scheme to be fully considered.
7. The Council's correspondence, while over a protracted period of time, demonstrates a proactive approach which sought to overcome its initial concerns. The applicants' decision to prepare an appeal against non-determination was entirely at their own risk. Consequently, in this regard, I cannot agree with the applicants' assertion that this amounts to unreasonable behaviour on behalf of the Council.

Substantive grounds

8. The applicants raise concerns over the legitimacy of the disputed conditions, suggesting that they were not necessary or reasonable. They are of the view that the Council did not properly weigh up the requirement for natural light in the planning balance and did not provide any substantive policy or evidence-based reasoning for the smaller area of rooflight in the area that it preferred. They also state that there was no agreement to the imposition of what they consider to be pre-commencement conditions.
9. The Councils reasoning for the disputed conditions is set out in its delegated report. At appeal the Council has further substantiated its reasoning for the imposition of the disputed conditions and made specific reference to development plan policies and relevant supplementary planning guidance to defend its position. Furthermore, the disputed conditions would not have prevented a lawful commencement on site and therefore are not true pre-commencement conditions. As such, the applicants' agreement was not necessary prior to the grant of consent.

10. I acknowledge that several iterations of the scheme were put forward to address the Council's concerns and that this will have incurred a cost for the applicant. However, it seems to me that there was a fundamental disagreement between the parties over the merits of the case and in particular the effect of the proposed rooflight on the significance of the heritage assets. Whilst the applicants may not agree with the Council's reasoning which led to the imposition of the disputed conditions, and it can be seen from my decision that I have taken a different view, this does not, in itself, amount to unreasonable behaviour.
11. For these reasons, I cannot agree that the Council acted unreasonably in this case. As such, there can be no question that the applicant incurred unnecessary or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, and thus an award of costs is not justified.

J M Tweddle

INSPECTOR