

Costs Decision

Site visit made on 13 October 2021

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021.

Costs application in relation to Appeal Ref: APP/U5360/D/21/3270074 148 Culford Road, Hackney, London N1 4HU

- 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 Mark Holloway for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was made against the refusal of planning permission for 'the erection of ground and first floor rear extensions, provision of mansard roof, rear elevation fenestration alterations and associated works'.
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Decision

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

Reasons

2. The Planning Practice 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.
 3. The application is made on several grounds. Firstly, that the Council based its decision without the benefit of a site visit and had a site visit taken place, the physical characteristics of the site and the surrounding area could have been considered more fully and a different decision may have been reached. Secondly, that the use of conditions could have overcome the Council's concerns relating to external finishing materials and fenestration detailing. Thirdly, that the Council failed to acknowledge the presence of other mansards at the end of the road which fall within the same Conservation Area and failed to attach appropriate weight to relevant Appeal decisions. Fourthly, that the Council placed undue reliance on its adopted Supplementary Planning Document titled '*Residential Extensions and Alterations*' (SPD) and finally, that there was no contact from the Council during the processing of the planning application.
 4. The Council has not responded to the Application for Costs, which is not helpful and reflects poorly on the Authority. The rear of the site is not visible from the public domain and it is not clear from the Delegated Report whether any form of site visit took place, or whether the rear of the site was viewed from any of the neighbouring properties. In any event, even if a site visit did not take place, there is no guarantee that a visit would have resulted in a different outcome; particularly as the matters at hand are of a subjective nature. Furthermore, I
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am mindful that the application was made at a time when a range of restrictions were in place due to the pandemic which will have made the determination of planning applications more challenging for the Council.

5. In my Decision Letter, I explained that conditions could be used to secure alternative finishing materials and window detailing. Whilst I accept that 'detailed design and materials' were referred to as issues within the Council's first reason for refusing the application, my reading of the Delegated Report is that the main points of concern related to the scale and positioning of at least some of the extensions and the effect in terms of overlooking. The imposition of conditions to deal with matters of detailing and materials would not have overcome these concerns.
6. There is no mention within the Council's Delegated Report of the other mansard roof additions referred to by the Appellant. Given the lack of reference to these examples, it is impossible to establish whether or not they were taken into account during the determination of the planning application; and if they were, the weight that was apportioned to them. An absence of a Rebuttal Statement has not helped in this regard. Notwithstanding this, in determining the Appeal, I carefully considered the examples referred to by the Appellant at both the application and appeal stage and for the reasons outlined within my Decision Letter, afforded only limited weight to them in the overall planning balance. Furthermore, as each planning application is to be determined on its individual merits, I am satisfied that the Council's failure to refer to the examples highlighted by the Appellant was not, in itself, fatal to the determination of the application.
7. The Council's SPD provides specific design guidance relating to a range of domestic extensions and alterations, including mansards. It is a useful document, but it is guidance rather than policy. It also provides some guiding principles such as '*roof extensions are not normally acceptable in those terraces where an unbroken roofline remains*' (paragraph 3.85). To my mind, this is sound design advice and it is not unreasonable for the Council to apply it where it sees fit. The Appellant made extensive submissions as to why the roofline of the terrace was considered to be broken but for the reasons outlined within my Decision Letter, I was not persuaded. To a degree, this is a subjective matter and I am satisfied that the approach taken by the Council was reasonable.
8. Finally, I sympathise with frustration felt by the Appellant due to the lack of contact during the application process. Once again, this does not reflect well on the Council. I acknowledge that workload pressures and operational challenges have increased significantly due to the pandemic, but this is of no consolation to the Appellant. Nevertheless, I find that this failure, in itself, was not the reason why the planning application was refused.
9. In light of the above factors, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Fitzsimon

INSPECTOR