
Costs Decision

Site visit made on 13 October 2021

by David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 November 2021.

Costs application in relation to Appeal Ref: APP/U5360/D/21/3273407 71 Durlston Road, Hackney, London E5 8RP

- 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 Moses Hirschier for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of an application for planning permission for the 'erection of rear roof extensions and insertion of rooflights to front roof slope and rear roof slope of rear outrigger'.
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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 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 asserts that the Council has acted unreasonably for two reasons. Firstly, that the Council misinterpreted policy LP3 of the adopted Hackney Local Plan (LP) and secondly, in refusing the application for planning permission, the Council failed to take into account the fact that planning permission has been granted for similar developments within the same road under the same policy regime.
4. Policy LP3 of the LP is consistent with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in so far as it requires any development within a Conservation Area to either preserve or enhance the character or appearance of that Conservation Area. My reading of this is that that development may have an effect, but at worst the effect may only be neutral. To this end, I see no misinterpretation of this policy within the Council's Delegated Report.
5. The Council asserts that not all of the examples of roof additions referred to by the Applicant are directly comparable to the appeal proposal in terms of their design and their context. Nevertheless, from the information available to me, it seems that some of the examples are very similar. Furthermore, I understand that since the Council refused to grant planning permission for the appeal proposal, it has subsequently approved a very similar proposal at No. 65 Durlson Road, just a few doors away.

6. Whilst one of the fundamental principles underpinning the planning system is that each planning application must be considered on its individual merits, consistency of decision making is important in order to maintain public confidence. In taking a completely contrary decision on a very similar proposal at a dwelling just a few doors away, I consider that the Council has been inconsistent with its decision making and therefore has acted unreasonably.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 the Council of the London Borough of Hackney shall pay to Mr Moses Hirschier, 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.
9. The Applicant is now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Fitzsimon

INSPECTOR