
Costs Decision

Site visit made on 4 November 2021

by P J Staddon BSc, Dip, MBA (Distinction), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2021

Costs application in relation to Appeal Ref: APP/U5360/W/21/3272240 10 Englefield Road, Hackney, London N1 4LN

- 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 Ms J Beynon for a full award of costs against the London Borough of Hackney Council.
 - The appeal was against the failure of the Council to determine an application for planning permission for the 'provision of replacement storage accommodation and enclosed roof terrace with associated works.'
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Decision

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

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. Unreasonable behaviour can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account. Failure to determine similar cases in a consistent manner may put a local planning authority at risk of an award of costs.
4. The PPG also provides examples of unreasonable behaviour by local planning authorities. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. The appellant alleges that the London Borough of Hackney Council (the Council) was unreasonable. Specifically, she says the Council failed to co-operate and work pro-actively; failed to issue a decision in a timely manner; made vague, generalised and inaccurate assertions about the proposal; delayed development that should be permitted; and failed to grant permission for a scheme that is the subject of a recently expired permission, when there has been no material change in circumstances.

6. I can appreciate the frustration concerning delays during the application stage. While clearly not to the appellant's satisfaction, from the evidence before me, there appears to have been some dialogue between the parties during the course of the application.
7. I can also appreciate that, in the light of the earlier approval¹ which included drawings showing a 500mm parapet increase, the Council's opposition to the current proposal at the application and appeal stages would provoke frustration. However, that planning permission clearly entailed a glaring inconsistency between the description of the development that appeared on the decision notice and the submitted plans. There is no evidence before me to explain this inconsistency, or why it was not identified and addressed at the appropriate time. In any event that permission is now time expired.
8. Even if unreasonable behaviour in respect of failing to determine the earlier and current cases in a consistent manner were evident, this unreasonable behaviour must have resulted in unnecessary or wasted expense for a cost claim to succeed. However, on the main issue in this case, the Council has provided reasons for their opposition to the proposal and how they relate to the development plan and national planning policies. Therefore, even if it had made a decision on the proposal earlier, or engaged more fully with the applicant on its objections, there is no compelling evidence to suggest that this would have led to permission being granted and thereby avoiding the need for the appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified. Accordingly, the application is refused.

P. Staddon

INSPECTOR

¹ Council planning reference number 2017/4288