



Costs Decision

Site visit made on 25 October 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 DECEMBER 2021

Costs application in relation to Appeal Ref: APP/T5150/W/21/3273045 20 Manor Farm Road, Wembley HA0 1AD

- 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 Milind Gaglani for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of the Council to grant planning permission for the conversion of a dwellinghouse into 2x self-contained flats, removal of side garage door, erection of rear dormer with 1x front rooflight, increase in ridge height of two-storey side extension, installation of dropped kerb to front & side of site with associated landscaping.
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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.
3. Paragraph 047 of the PPG gives examples of unreasonable behaviour which may give rise to a procedural award of costs against a local planning authority. These include providing information which is shown to be "manifestly inaccurate or untrue", a "lack of co-operation with the other party or parties", and "delay in providing information or other failure to adhere to deadlines"¹.
4. The applicant alleges that the Council's officer report included information, which was inaccurate, firstly in stating that the proposed upper flat would not comply with space standards set out in Policy D6 of the London Plan, and secondly in stating that there was "no amenity space provided while in fact the proposal provides 64.33 sqm of amenity space for the flat on the ground floor".
5. In respect of the first of these claims, for reasons which I have set out in my main decision I consider that the proposal did not comply with the policy requirement. In respect of the second, what the officer report in fact said was:

"The proposed site plan and supporting design statement shows the ground-floor unit would benefit from sole use of the rear garden, which has

¹ Reference ID: 16-047-20140306

approximately 72sqm of soft-landscaping, of which approx. 52sqm would be useable space. This would meet the target set out in DMP19 for the ground floor flat. The upper-floor flat, which is also a 3-bedroom family-sized unit, would have no access to the rear garden or any private external amenity space. The proposal falls below the targets for external amenity space expressed within policy DMP19 and would not include the provision of space that is sufficient in size and type to satisfy the needs of future residents. The proposal would constitute a poor standard of residential accommodation for future residents and is contrary to policy DMP19 and emerging London Plan policy D6."

6. I quote the words from the officer report in full because it is quite clear that, notwithstanding the differences in measurements, the Council had taken into account the amenity space which would be provided for the ground floor flat but concluded that the upper flat would not have any private amenity space. The wording used on the decision notice reflected that reasoning. Again, for reasons set out in my main decision I do not consider that assessment to be inaccurate in any way. It follows therefore that I do not find that the Council provided information which was manifestly inaccurate or untrue.
7. The applicant has put forward two principal justifications in respect of the alleged lack of cooperation. These are firstly that the Council acted unreasonably in seeking to change the description of development in response to a Judicial Review of Policy DMP19 of the 2016 Brent Local Plan Development Management Policies Plan, and secondly that it did not engage with the applicant to negotiate changes to the scheme.
8. It is not clear to me why the Council considered that the description of development should include wording explaining that it would be a "departure from policy DMP19", and as I have explained in my main decision, I do not agree that this was necessary. However, the Council e-mailed the applicant on 27 January 2021 suggesting this change and following a phone call between the parties the applicant e-mailed back two days later politely but firmly declining to accept that wording. That appears to have been the end of the matter, and while I consider that the Council appears to have been misguided in its approach to amending the description of development, I cannot on the basis of the evidence before me conclude that this was a lack of cooperation which amounted to unreasonable behaviour.
9. In respect of other engagement between the applicant and the Council, the applicant has provided e-mails dated 11 and 12 February 2021. These relate to delays in issuing a decision on the planning application, which was due by 3 February, and there is no reference by either party to potential alterations to the scheme. I note also that the decision notice indicates that the applicant did not seek to engage in pre-application discussions with the Council. Again, the evidence before me is very limited on this point. In my view it does not substantiate the applicant's claim of unreasonable behaviour in respect of a lack of co-operation.
10. Addressing the lack of a decision at that point, in the e-mail sent to the applicant on 12 February 2021 the Council's case officer stated that "I apologise for the delay – I am waiting for management to tell me the process moving forward". The case officer also stated that "I will update you as soon as possible", although it then appears that the decision notice refusing planning

permission was issued on 16 February without further correspondence between the parties.

11. Although the applicant had indicated on 29 January that they would agree an extension of time no specific deadline was set. Having been told on 12 February that an update would be provided it may have come as something of a surprise to the applicant that the next communication appears to have been the decision notice. In this limited matter, I therefore consider that the Council's behaviour was unreasonable in the terms set out in the PPG. However, in order to make an award of costs I also need to be satisfied that this has resulted in unnecessary or wasted expense.
12. The applicant stated on the costs claim form that the Council's behaviour had caused him to incur fees for advice from counsel, and for engaging professional representation to handle the appeal. Nowhere else in the applicant's appeal submissions is there any reference to legal advice, and there is no substantive evidence at all to suggest that the case raised any issues which would normally warrant seeking advice from counsel. The fact that I reached a different view to the Council on the issue of character and appearance is of little significance, as even if the Council had engaged more fully with the applicant on this point the fundamental conflict with the development plan in respect of internal living space and outdoor amenity space would have remained. It therefore seems likely to me that planning permission would still have been refused, and the applicant would have been likely to appoint a consultant to fight the appeal.
13. The appellant's submissions also included broad allegations that the Council had not performed its duties as a decision-making body and had disrespected a lawfully granted consent. However, no evidence was put before me which substantiated these further claims. While it appears to me that the Council acted unreasonably inasmuch as its communication with the applicant was not always of as good a standard as it might have been, I am not satisfied that this has resulted in unnecessary or wasted expense for the applicant.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector