



Costs Decision

Site visit made on 27 October 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2022

Costs application in relation to Appeal Ref: APP/W5780/W/21/3268450 32 Overton Drive, Wanstead, London E11 2NJ

- 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 David Ian for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of planning permission for demolition of the existing dwelling and erection of a new dwelling with part two-storey rear extension and basement.
-

Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. An application may be made on procedural grounds, relating to the appeal process, or substantive grounds relating to the planning merits of the appeal.
3. In summary, the appellant's claim is that the Council, during the application process, allowed consultees to formulate their comments on the basis of comments of other consultees, rather than commenting solely on the evidence before them. It is also alleged that consultees assessed the merits of repair proposals beyond the scope of the application, which resulted in the comments not being properly informed by fact and making recommendations not feasible to implement. The appellant also states that the Council allowed a perceived conflict of interest to occur in seeking comments from its Building Control department, as it was the same department that previously certified the flawed building works to the roof.
4. The appellant further points to inconsistencies in the Council's validation requirements, namely requiring an expensive Basement Impact Assessment (BIA) which appears to have had minimal influence on the decision. Finally, the appellant raises that the Council's concern over the effect of the proposed rear extension was unjustified, given a similar extension had been granted previously.
5. The Council, in response, states that its consultees based their judgement on the evidence before them, including a site visit by the Building Control department. It adds that no conflict of interest occurred, as a different officer

provided comments on the application. In terms of consultees straying beyond their remit, the Council argues that its consultees assessed the proposal to ascertain whether there was compelling justification for demolition.

6. The Council further states that its validation requirements were reasonable, given the nature of the proposal, with a BIA being required under Policy LP31. With respect to the reason for refusal relating to neighbours' living conditions, the Council points to previous applications being considered under a different policy context and prior to the adoption of the Housing Design SPD, and to each case being determined on its own merits, having regard to specific evidence, including public comments.
7. The PPG is clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
8. In terms of the Council's validation requirements, there was nothing unreasonable in a BIA being sought, given the clear policy requirement for submission of one where a basement is proposed. In view of the nature of the proposal, it is also evident that such a document could not reasonably have been sought at a later stage, e.g. by condition. Moreover, even if a particular document was not sought under an earlier application, it is not unreasonable for the Council to subsequently seek such information on a later application where it is adjudged to be a material consideration. Ultimately, such matters are for the Council's judgement, and I find that they have not led to the Council exhibiting unreasonable behaviour in defending the first reason for refusal at the appeal stage.
9. I have no evidence to dispute that it was a different Building Control officer who conducted the review of the application documents, or that the comments made were in any way subject to influence or otherwise less than valid. Ultimately, any complaint of conflict of interest would be a matter for local government accountability, but on the evidence before me I do not find there to be unreasonable behaviour in this respect.
10. As set out in my Appeal Decision, I see nothing untoward in the Council's heritage consultee referring to comments of the Building Control Officer, given the clear direction of the National Planning Policy Framework to give great weight to the conservation of designated heritage assets, and that any harm to, or loss of, the significance of a designated heritage asset, including from its destruction should require clear and convincing justification. As I state in my main Decision, this national policy position means it is appropriate to evaluate the potential for repair of the building in the first instance, prior to considering demolition. I find no unreasonable behaviour in this respect.
11. The Council's second reason for refusal is troublesome in that it contradicts the reasoning set out in its delegated report. I note the failure of the Council to reference a previous planning permission, although from the dates given this permission may have lapsed without being implemented. However, despite the reason for refusal referring to adverse effects on the character and appearance of the conservation area and the living conditions of neighbouring occupants, the delegated report instead states that the extension *'is unlikely to have any significant impact on the amenity enjoyed at No. 34 Overton Drive'* and *'No. 30 Overton Drive [...] is located to the west of the host property so is unlikely to*

experience any significant impact from the formation of the first floor rear extension. Both paragraphs conclude by indicating the proposal would be compliant with the development plan in these respects, in stark contrast to the reason for refusal set out in the decision notice. The Council did not seek to address or correct this contradiction in its statement of case.

12. I find that in respect of this reason for refusal, the Council has failed to produce evidence and made inaccurate assertions about the proposal's impact, unsupported by objective analysis. Therefore, the Council could not substantiate this reason for refusal. This amounts to unreasonable behaviour. However, for an award of costs to succeed, such behaviour must also have resulted in unnecessary or wasted costs on the part of the claimant. Beyond very brief reference to what was evidently a secondary matter in their Statement of Case, the applicant has not been put to demonstrable wasted expense in pursuing this aspect of the appeal.
13. It will be seen from my decision that I agree with the Council on the first main issue. The Council therefore has substantiated its position in this respect and, notwithstanding its actions with respect to the second reason for refusal, its refusal of the application did not prevent or delay development which should have been permitted. On that basis, whilst the Council's behaviour was in part unreasonable, it did not, in the event, involve the applicant in unnecessary or wasted expense in making the appeal.

Conclusion

14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Having regard to all matters raised, an award of costs is not justified, and no award is made.

K Savage

INSPECTOR