



Costs Decision

Site visit made on 8 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2022

Costs application in relation to Appeal Ref: APP/H5390/W/21/3278813 25-36 Fitzjames Avenue, London W14 0RR

- 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 Jonathan Milburn for a full or partial award of costs against the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of the Council to grant planning permission for change of use of the lower ground floor of 25-36 Fitzjames Avenue. This is from a basement used for storage lockers and plant equipment to a residential dwelling. The works will include; increasing current window openings to maximise light within the dwelling, creation of new window openings, treatment to external courtyard, demolition of some internal partition walls, complete re-fit out of internal space. Also the creation of a new cycle storage in the Lower Ground Floor of 11-24 Fitzjames Avenue to offset the space currently used for cycle storage within the lower ground floor of 25-36 Fitzjames Avenue.
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Decision

1. The costs application is allowed and full costs are awarded.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The application for costs is made on a range of grounds in relation to the substance of the appeal. One of the grounds of the claim is based on the Council persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
4. There is evidence before me that a similar scheme was approved at appeal in 2014 (APP/H5390/A/14/2218074). Although the evidence indicates an alternative internal arrangement, the substance of the scheme appeared to be similar in that a two-bedroom flat would be provided within the same basement area as that in relation to this appeal. Further, although a different development plan was in place at the time¹, the evidence indicates that policy requirements² in relation to detailed residential standards that were in place at the time have been similar to those currently in place³.

¹ Hammersmith and Fulham Development Management Local Plan July 2013.

² Policy DM A9 Detailed residential standards.

³ Policy HO11 of the Fulham Local Plan 2018.

5. Under such circumstances, it was therefore unreasonable of the Council to come to an adverse conclusion on the grounds that it did. This is because a previous inspector considered a similar scheme acceptable and given that the circumstances at the site appear similar to those at the time of this previous decision.

Conclusion

6. Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Whilst I am aware that the claim has also been made on other grounds, as a result of this matter I therefore find unreasonable behaviour that has resulted in unnecessary and wasted expense in the appeals process. A full award of costs is subsequently justified.

Costs Order

7. 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 London Borough of Hammersmith & Fulham shall pay to Mr Jonathan Milburn 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.
8. The applicant is now invited to submit to the London Borough of Hammersmith & Fulham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

T J Burnham

INSPECTOR