The Planning Inspectorate

Costs Decision

Site visit made on 25 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2022

Costs application in relation to Appeal Ref: APP/U5360/W/21/3268645
Durley House, Durley Road, London N16 5JP

- 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 M & N Lipschitz for a full award of costs against the Council of the London Borough of Hackney.
- The appeal was against the refusal of the Council to grant prior approval for the erection of an additional storey above an existing residential building to provide two self-contained residential units.

Decision

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

Reasons

2. Irrespective of the outcome of an appeal, Planning Practice Guidance (PPG)[1] advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It is claimed that;

   • The LPA are misinterpreting the GPDO;

   • The LPA are preventing or delaying development which should clearly be permitted;

   • The LPA have failed to produce evidence to substantiate each reason for refusal on appeal;

   • The LPA are misinterpreting the Inspectors decision letter; and

   • The LPA are Acting contrary to, or not following, well-established case law.

3. An application for a full award of costs is therefore made.

4. As can be seen from the decision letter, I do not consider that the Council have misinterpreted the GPDO and it was not unreasonable for them to conclude as they did. It follows that they have not acted such as to prevent or delay development which should have clearly been permitted. Further, the Council have clearly outlined their reasoning within both their officer report and appeal statement. They have not therefore failed to substantiate their reasoning. There are no grounds for costs in relation to these issues.

[1] Paragraph: 030 Reference ID: 16-030-20140306

5. There is concern that previous planning appeal decisions relating to the site[2] have been misinterpreted. These relate to the refusal of full planning applications rather than refusal to grant approval required under a development order. However, given that the proposals under those applications appear similar to those before me now, it was reasonable to take those considerations into account, particularly given the manner in which they have considered issues which relate to the external appearance of the building. There are no grounds for an award of costs in relation to this part of the claim.

6. It is suggested that the Council has acted contrary to or not followed well established case law[3] in its approach to interpreting the GPDO. In effect, the judgement clarifies that the interpretation of the GPDO should be on the basis of the ordinary meaning of the language used. Given my conclusions on the appeal, I consider that this is what the Council did in this case. There are no grounds to award costs in relation to this matter.

Conclusion

7. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

T J Burnham

INSPECTOR

[2] APP/U5360/W/15/3130548 & APP/U5360/W/15/3130550.
[3] Lindblom LJ in R (Mawbey) v Lewisham BC [2019] EWCA Civ 1016.