
Costs Decision

Site visit made on 29 November 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th January 2022

Costs application in relation to Appeal Ref: APP/U5930/D/21/3277040 19 Pretoria Road, Leytonstone, London E11 4BB

- 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 Seyi Ojo for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of planning permission for development described as 'construction of a ground and first floor side extension and single storey rear extension including conversion of the existing domestic side garage into a habitable room (play room). Installation of UPVC framed window in place of the existing front garage door'.
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Decision

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

Reasons

2. Planning Practice Guidance (the '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 process¹.
3. The essence of the application is that the Council did not properly consider the appeal proposal in the context of (a) other extensions to the appeal property which could be carried out with the benefit of a lawful development certificate² (the 'LDC development'), or (b) a previous appeal decision³ for similar proposals at the appeal site (the 'previous appeal development'). As a result, the applicant considers that the Council prevented or delayed development which should clearly have been permitted and that the appeal was avoidable. I have also taken the Council's comments on the application into account in my decision.
4. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs⁴.
5. Neither description of the appeal proposal (the applicant's or the Council's) included the LDC development, nor did the appeal plans show it. There is, though, no dispute that the Council was aware of the LDC development and the previous appeal development Inspector's decision.

¹ PPG paragraph ID: 16-030-20140306

² Council's reference 202587

³ APP/U5930/D/20/3262748

⁴ PPG paragraph ID: 16-050-20140306

6. Though not a matter before me in my appeal decision (as by then the LDC development had been substantially completed), I agree with the previous Inspector that a condition could have required the LDC development and (in this case) the appeal proposal to be carried out simultaneously⁵. Alternatively, for the LDC development to be completed before the appeal proposal was commenced. Phasing of works, even householder development, is not unusual or uncommon.
7. Either way, a condition would plainly have done no more than overcome the Council's concern that the roof form of the appeal proposal, taken in isolation and absent the LDC development, would not visually integrate with the roof of the appeal property. It would, therefore, have been necessary and reasonable. At the time of the Council's decision there was no compelling evidence that once commenced either development would not be completed, indeed this remained the applicant's stated intention. Nor is there any particular reason why the Council could not have detected construction of only one part of a simultaneous development or an incorrect phasing of the constituent parts.
8. Notwithstanding the above, in any event, the Council refused planning permission for the appeal proposal due to a number of objections to details of the entire first floor part of the side extension, not just the roof. It was the sole reason for refusal. In this respect, the Council's decision was incompatible with the plain reading of the previous appeal Inspector's findings for the reasons I set out in my appeal decision.
9. However, on the evidence before me, in my view the Council's decision was not irrational; rather, that its comprehension of the previous Inspector's decision and the ramifications of it for the appeal proposal was not clearly or sufficiently resolved. I appreciate that this gave the impression of an entrenched or intransigent position, but there is no other apparent reason to suggest, or justify, why the Council would ordinarily act, on the face of it, in such an otherwise obstructive manner in this context.
10. While I have reached different conclusions to the Council and found no adverse impacts that would cause harm, my appeal decision should not be taken as vindication of the applicant's complaints in its costs application. While these circumstances have led the applicant to decide to pursue the matter through the appeal process, parties in planning appeals normally meet their own expenses⁶.

Conclusion

11. For the reasons given above, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. A full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR

⁵ Paragraph 9 of her decision

⁶ PPG paragraph ID: 16-028-20140306