



Costs Decision

Site visit made on 9 February 2022

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2022

Costs application in relation to Appeal Ref: APP/U5360/D/21/3288922 54 Osbaldeston Road, Hackney, London, N16 7DR

- 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 Krausz for a full award of costs against the decision of the Council of the London Borough of Hackney.
 - The appeal was made against the refusal of planning permission for erection of a side and rear dormer window; insertion of two rooflights in front roofslope.
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Decision

1. I allow the application for a partial award of costs.

Reasons

2. The government's Planning Practice Guidance (PPG) states 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.

Ground A

3. Following a previous refusal and an aborted appeal, the applicant says that the five week delay in the Council issuing a decision for this proposal put the applicant under further economic stress. The PPG only allows for costs to be claimed that area directly related to the appeal and does not allow costs to be claimed for the period during the determination of the application but behaviour and actions during that time can be taken into account in the consideration of a costs award.
4. However, the Council has explained that this was due to sickness absence and staff shortages which were exacerbated by the pandemic. Given the prevalence of such issues during that time, the Council's explanation seems reasonable. Even if it had determined the application more quickly, it seems to me that the reason for refusal would have been the same and the need for the appeal would not have been avoided. I find, therefore, that no unreasonable behaviour occurred in this regard.

Ground B

5. The PPG provides as an example of unreasonable behaviour, local planning authorities not determining similar cases in a consistent manner. The applicant says that the Council was inconsistent in its decision making. He has referred to another development at no 50 Osbaldeston Road that was approved by the

Council in May 2021 (ref 2021/0445) which he says was for an identical proposal to a previously refused scheme at the appeal site (ref 2019/4217). The Council says that the extensions at no 50 were less bulky and boxy than those submitted with the appeal scheme. That is confirmed by a comparison of the drawings for both the previously refused and the appeal proposals with the approved drawings for no 50 but I found in my decision that the difference was not significant.

6. However, my appeal decision indicates that the appeal proposal included the provision of a sukkah roof which was absent from the scheme at no 50 (and from other similar schemes in the street approved prior to and after the 2019 decision). I found that this element was significant and the appeal decision turned on the matter of detailed design in regard to the sukkah window. I concluded that, had all other matters been acceptable, the general location and bulk of the proposal would have been acceptable given the number of other similar, approved dormer extensions within the visual vicinity of the appeal site. As such, I find that there has been some inconsistency in the Council's decision making.
7. Although a greater degree of consistency would not have avoided the need for the appeal because the Council's decision also referred to inappropriate design, it has resulted in some additional work for the applicant in researching and comparing other similar developments and defending the matter of bulk in the appeal. I find then that as the Council has not determined similar cases in a consistent manner this amounts to unreasonable behaviour in substantive terms.

Conclusion

8. For the reasons given above, and notwithstanding my findings in regard to ground A, I find that unreasonable behaviour, in substantive terms, resulting in unnecessary or wasted expense as described in the PPG has been demonstrated in regards to ground B and that a partial award of costs is justified.

Costs Order

9. 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 Council of the London Borough of Hackney shall pay to Mr Krausz the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the appeal on ground B; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicants are now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sarah Colebourne

Inspector