



Costs Decision

Site Visit made on 5 July 2021

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Costs application in relation to Appeal Ref: APP/R5510/W/21/3268811 38 Hazeldene Gardens, UXBRIDGE, UB10 9DJ

- The appeal is made under section 78 of 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 Mohamed Bharadia for a full award of costs against the London Borough of Hillingdon.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of existing garage and construction of a 2 storey 2 bedroom home.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) states that irrespective of the outcome of an appeal, costs may only 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 associated appeal process.
3. The same guidance makes it clear that 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. Failing to produce evidence to substantiate a reason for refusal on appeal, making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, or not determining similar cases in a consistent manner, are cited as examples and are reflected in the applicant's claim. The submission also claims that the proposal complied with the development plan and should have been permitted and the necessary appeal has caused the appellant delay and unnecessary expense.
4. Whilst I appreciate the outcome of the application will have been a disappointment to the appellants, the Council were not unreasonable in coming to that decision from the information they had available to them. The concerns raised in the reason for refusal are apparent in the delegated report which adequately sets out how the proposal, in the Council's opinion, would conflict with relevant adopted planning policies. The concern regarding the perceived failure of the Council to consider the previous consent for an annexe at the site is noted. However, an annexe is materially different to a separate residential dwelling and would have a different level of impact with regards to amenity, character and parking. Accordingly, I am satisfied that the Council's reasoning was credible and it was entitled to reach the decision it did.
5. With regards to the failure to determine the application under the emerging London Plan (LP) policies, the decision was issued by the Council on 2 February

2021 and the LP published in March 2021. As such, it did not form part of the development plan until after the date the Council made their decision. Whilst weight could be attributed to the 'intention to publish' version of the plan, it is for the individual decision maker to decide the weight to be given.

Nevertheless, the Council made their decision on policies that were adopted at the time the decision was made and were entitled to do so. I note the assertion that the Council have been selective with regards to the application of policies in other cases, however I do not have all the details of these in front of me.

6. I find nothing to suggest that a decision was reached other than on the basis of the merits of the proposal, as submitted by the applicant. I also find no evidence that the appellant incurred any additional expense as a result of this.
7. Accordingly, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposal which justified its decision.

Conclusion

8. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Tamsin Law

INSPECTOR