



Costs Decision

Site visit made on 18 March 2022

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th April 2022

Costs application in relation to APP/A5270/D/21/3287996 33 & 35 Malden Avenue, Greenford, UB6 0DJ

- 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 B Ganesh for a full award of costs against London Borough of Ealing Council.
 - The appeal was against the refusal of planning permission for a single storey rear extension, decking and access steps to rear garden, front porch (no. 33); single storey side/rear extension replacing existing garage, basement excavation to form lower ground floor extension, rear balcony and access steps to garden, front porch (no. 35) – (Joint Application).
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (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 process. The PPG makes it clear that a Local Planning Authority (LPA) is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The appeal followed the refusal of permission on 2 November 2021 of an application made on 26 March 2021 for a single storey rear extension, decking and access steps to rear garden, front porch (no. 33); single storey side/rear extension replacing existing garage, basement excavation to form lower ground floor extension, rear balcony and access steps to garden, front porch (no. 35) – (Joint Application). There was a single reason for refusal which was concerned with the impact of the proposal upon the host dwelling and character of the area. My decision, which accompanies this decision, agreed with the Council's decision and dismissed the appeal.
4. The appellant's cost application is essentially based upon the claim that the LPA did not make their decision on time given that the application was validated on 19 May 2021 and the decision was issued on 3 November 2021 (though I note the decision notice is dated 2 November 2021). The claim is made on a both procedural basis i.e. it is relating to the process and a substantive basis relating to the issues arising from the merits of the appeal itself – the latter outlined within the costs stated to be claimed.

5. The PPG states that costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. In that regard claims relating to the appeal site leaking, day to day maintenance issues and a reduced standard of living as a result of the delay stated are ineligible for an award of costs.
6. Whilst behaviour and actions at the time of a planning application can be taken into account (in so far as whether or not costs should be awarded) costs can only be awarded in relation to necessary or wasted expense at the appeal. Time chasing the Council, and the claimed lack of phone access, is noted but in this case I find that the proposal would likely have still been refused even with a greater amount of contact with the Council due to issues which were identified and the matters upon which the parties failed to agree.
7. Furthermore there was nothing preventing the appellant from pursuing further applications at the same time or proceeding to appeal on non-determination (if there was no agreement to the extensions of time which occurred). Notwithstanding this a refusal, whether made on time or delayed as claimed, would not have changed the likelihood of the proposal ending up before an Inspector at appeal. The appellant would have had to address those concerns in any event. I have no evidence unnecessary and wasted expense in the appeal before me.
8. I note the appellant asserts with regard to unnecessary and wasted expense that the case was not based upon the merits of the subject site and proposal, however, for the reasons outlined in my decision letter I found that the LPA refused the application for a proposal that is not in accordance with the development plan policy. No material considerations including national policy indicated that planning permission should have been granted. As a result of this the PPG is clear that there should generally be no grounds for an award of costs against the LPA for unreasonable behaviour.
9. It can be seen from my decision that I agreed with the LPA and that there were sufficient grounds to refuse the appeal as a result of my findings for the refusal reason. As a result, it reasonably follows that I cannot agree the Council has acted unreasonably in this case, nor has their behaviour resulted in unnecessary cost coming to appeal or that the actual refusal given by the LPA was unreasonable.

Conclusion

10. I do not therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a full award of costs is unjustified.

Eleni Randle

INSPECTOR