

Costs Decision

Site visit made on 1 March 2022 by S Witherley CIHCM MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2022

Appeal Ref: APP/Y5420/D/21/3280936

92 Pulford Road, London N15 6SR

- 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 appeal is made by Mr Shimshon Bard against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2021/2104, dated 30 June 2021, was refused by notice dated 12 August 2021.
 - The development proposed is: The erection of one additional storey immediately above the existing building.
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Decision

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

The Respective Cases

2. The Planning Practice Guidance (PPG) advises that costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant's application for a full award of costs is based on substantive grounds.
4. The claimant maintains that the Council prevented development that should clearly have been granted under Article 3, Schedule 2, Part 1, Class AA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), that the Council has misinterpreted the GPDO, has failed to follow established case law, and failed to produce evidence to support the reason for refusal.

Reasons

6. On the grounds of failing to produce evidence to substantiate the reason for refusal on appeal, I have been provided with a copy of the Council Planning Officer's report, which clearly sets out the Council's assessment of the proposal and the reason why the Council refused prior approval. The appeal has been determined under the simplified regime for householder developments and this does not make provision for the Council to submit a further statement of case. Within this context, I am satisfied that the delegated report, together with the other documents in the Council's appeal submission provided sufficient and justifiably evidence to demonstrate why it was necessary and reasonable, in planning terms, to refuse the Prior Approval application.

7. The appellant makes reference to the judgement in *R (Mawbey) v Lewisham BC* [2019] EWCA Civ 1016, and states that this judgement sets out the approach to be taken when interpreting the GPDO. However, whilst this judgement is of assistance in interpreting the GPDO more generally and particularly with telecommunications apparatus, it pre-dates the more recent High Court Judgment in *CAB Housing LTD v SSLUHC & Broxbourne; Beis Noeh LTD v SSLUHC & LB Haringey; Mati.- Rotenberbg v SSLUHC & LB of Haringey* [2022] EWHC 208 (Admin). Reference was made in the judgment to *Mawbey* among other cases.
8. This judgment specifically addresses upwards extensions under Class AA of the GPDO and clarifies a number of matters including whether 'external appearance' considerations allow assessment of the wider context. The judgement found that it is acceptable to do that and in summary states control of the external appearance of the dwelling house is not limited to the impact on the subject property itself, but also includes impact on neighbouring premises and the locality.
9. Reading the delegated report in the round I am satisfied that the assessment was made in the context of the limitations of the Order. The Council did not therefore misinterpret or stray into areas beyond the scope of the prior approval regime.
- 10 The differences on substantive matters were clearly over matters of planning judgement and there is no evidence that the Council behaved unreasonably in that respect. In the absence of any unreasonable behaviour there are no grounds for an award of costs and I recommend that the application is refused.

Inspector's Decision

11. I have had regard to the submitted evidence and the Appeal Planning Officer's report and, on that basis, agree with the recommendation. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and, accordingly, I shall refuse the application.

Chris Preston

INSPECTOR