

Costs Decision

Site visit made on 1 April 2022

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2022

Costs application in relation to Appeal Ref: APP/U5930/W/21/3283399 85A Howard Road, Walthamstow E17 4SG

- 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 Ms Louise Brotherton 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 full width ground floor rear extension to ground floor flat and new outbuilding.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. 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, for example, by unreasonably refusing applications or unreasonably defending appeals.
3. The appellant's case is that the Council acted unreasonably during the application process, firstly by inviting revised plans without informing the appellant of other concerns with the proposal, secondly by not offering the applicant the opportunity to withdraw the application before a decision was made, so as to avail of the 'free go' of a repeat application, and thirdly by misinterpreting the proposed plans and failing to appreciate that the ground level would be lowered to help limit the overall height of the extension to 100mm above the boundary fence. This was exacerbated by the failure of the Council to conduct a site visit, as London was not subject to a Covid-19 lockdown at the time.
4. The Council states that the applicant submitted revisions voluntarily, not at its request, and that the changes made to add a green roof had no bearing on the acceptability of the proposal and did not form part of the reasons for refusal. It adds that Covid-19 restrictions were still in place at the time and its policies were to avoid all but essential site visits in order to protect the health and safety of both council officers and members of the public. It adds that a site visit was not essential, as the proposed excavation was indicated on the plans, as was the height of the extension relative to the ground level of the

neighbouring property. Any differences in measurements quoted by the planning officer were immaterial to its overall view of the proposal's impact.

5. The PPG is clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
6. I can understand that the Council accepting revised plans and undertaking further public consultation may have given the applicant the impression of a favourable outcome to the proposal. However, these plans were volunteered by the applicant, and not sought by the Council to address a concern it had. It would have been helpful for the Council to update the applicant as to any concerns it had at the time the revised plans were being discussed, but it was also open to the applicant to pose the question, and I have nothing in evidence to suggest that this occurred.
7. Moreover, the Council made it clear to the applicant during the determination period how it was dealing with applications during the pandemic, and the absence of a site visit was not therefore a surprise to the applicant or an isolated approach by the Council in this case. As to the matter of offering withdrawal, this may be a courtesy generally extended by councils, but I am not aware of this being obligatory. The Council was entitled to determine the application and did so.
8. Ultimately, concerns with the Council's handling of the application are matters for local government accountability. The evidence before me does not clearly indicate that the Council's conduct during the application has led to wasted expense on behalf of the applicant at the appeal stage. Nor is there evidence of the Council failing to adhere to any procedural requirements at the appeal stage. Therefore, I do not find unreasonable behaviour in these respects.
9. The Council gave reasons for refusing permission in its delegated report and statement of case. Whilst in the planning judgement I have not agreed with the Council in terms of the effect of the rear extension on neighbours' living conditions, the Council offered evidence to substantiate its position, and I do not find unreasonable behaviour in respect of the first reason for refusal.
10. As will be seen from my decision, I have agreed with the Council in respect of its second reason for refusal. Therefore, the Council's refusal of the application did not ultimately prevent or delay development which should have been permitted. On that basis, the Council's behaviour did not, in the event, involve the applicant in unnecessary or wasted expense in making the appeal.

Conclusion

11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Having regard to all matters raised, an award of costs is not justified, and no award is made.

K. Savage

INSPECTOR