



Costs Decision

Site visit made on 29 March 2022 by Darren Ellis MPlan

by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Costs application in relation to Appeal Ref: APP/Y5420/D/21/3280898 14 Pulford Road, London N15 6SP

- 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 Aron Bard for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of prior approval for 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.

Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. 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. The PPG advises that a local planning authority is at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and acting contrary to, or not following, well-established case law.
4. The applicant contends that the Council ignored the fact that Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) grants planning permission for development consisting of the enlargement of a dwellinghouse by construction of an additional storey, the subject of the prior approval; and that the Council may consider only the appearance and design of the principal elevation and not the context of the wider terrace.
5. Class AA permits the construction of additional storeys to a dwellinghouse subject to the limitations and conditions set out in paragraphs AA.1 and AA.2. These include a requirement that the developer applies for prior approval to the local planning authority in relation to various matters. While a more 'light touch' approach than an application for express planning permission, this nevertheless involves an assessment of the scheme against several criteria

including the external appearance of the dwellinghouse and the impact on the amenity of adjoining premises. The requirement for prior approval indicates that the creation of an extra storey may not be acceptable in every situation and requires consideration of its relationship to the existing dwelling and neighbouring premises.

6. With regard to external appearance, at the time the Council made its decision there was little clarity regarding what could be assessed as part of condition AA.2(3)(a)(ii) and, at the time, no case law on the interpretation of that paragraph. This is evidenced by the different approaches taken by Inspectors in the appeal examples presented by both parties. Therefore, at the time of the Council's decision, it was not clear whether the wider street scene could or could not be taken into account. However, the use of the word 'including' in that paragraph indicates that it does not form an exhaustive or closed list, so does not restrict consideration only to the two elevations listed. As a result, it was not unreasonable for the Council to also consider the wider area in their assessment, as various Inspectors had.
7. Likewise, the use of the word 'including' in paragraph AA.2.(3)(a)(i) means that the list in this paragraph is not exhaustive, so it was reasonable for the Council to consider that other factors could affect neighbouring amenity and that these should be taken into account in the assessment for prior approval. The case law cited by the applicant supports such an interpretation, of giving language its ordinary meaning. Therefore, the Council did not act unreasonably in assessing whether the proposed extension would cause an overbearing impact on the adjoining premises, as that was a matter that could affect amenity.
8. Accordingly, I find that the Council did not misinterpret the GPDO when considering the prior approval matters. Nor did it fail to consider the principle of what scale and type of development is allowed by the conditions and limitations of Class AA, as it assessed the proposal against those requirements in its officer report. Moreover, assessment of those prior approval matters is part of the process and necessary for planning permission to be granted by the GPDO. Therefore, it was not unreasonable for the Council to conclude that a development of that scale would have unacceptable impacts in relation to those prior approval matters.
9. The effects of the proposal on the external appearance of the dwellinghouse and on the amenity of adjoining premises were fully substantiated in the reasons for refusal and the officer's report. The Council considered the proposal against the National Planning Policy Framework (the Framework) as provided for in the GPDO, as well as the development plan. Having assessed the proposal against the Framework insofar as it relates to the prior approval matters, I have reached a similar conclusion to the Council. Consequently, this was not a case where the development should clearly have been permitted.
10. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and recommend that the application be refused.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

11. I have considered all the submitted evidence and the Appeal Planning Officer's report and agree with the recommendation. On that basis the application for an award of costs is refused.

L McKay

INSPECTOR