
Costs Decision

Site visit made on 14 March 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Costs application A in relation to Appeal Ref: APP/T5150/X/20/3260882 133B Chatsworth Road, London NW25QT

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Wendy Deacon for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of a certificate of lawful use or development for the construction of an enlarged dormer to existing roof.
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Costs application B in relation to Appeal Ref: APP/T5150/W/20/3260886 133B Chatsworth Road, London NW25QT

- 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 Mrs Wendy Deacon for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for a single storey rear extension.
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Costs application C in relation to Appeal Ref: APP/T5150/W/20/3260885 133B Chatsworth Road, London NW25QT

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Wendy Deacon for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a single storey rear extension.
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Decisions

1. The applications for awards of costs are allowed in the terms set out below.

Reasons

2. The start point in planning appeals is that the parties will normally meet their own expenses. Costs will normally be awarded where the following conditions have been met: a party has made a timely application for an award of costs; the party against whom the award is sought has behaved unreasonably; and the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Four appeals were lodged in respect of the property, and these were determined in a single decision notice. The Appellant submitted a costs claim for three of the four appeals, and these are referred to in my header, above. In

its response, the Council also makes comments in respect of the fourth appeal, APP/T5150/W/21/3266678. However, no costs application was made for that appeal, so I do not address it in this costs decision.

4. The Claimant's case in all her claims is that the Council acted unreasonably in that it incorrectly considered 133B Chatsworth Road to be a flat that, therefore, did not benefit from permitted development (PD) rights set out in the GPDO¹. She says that this was raised with the Council at the beginning of the application process, but it refused to apply the legislation correctly. This was unreasonable behaviour that led to the incurrence of unnecessary costs in the preparation and submission of the appeal. With respect to Claim C, she makes the point that further costs were incurred in resubmitting the application for the rear extension on a different application form.
5. In respect of Costs Application A, The Council acknowledged its error at the appeal stage. It agrees that No 133B is a dwellinghouse that benefits from PD rights and that the proposed enlarged dormer extension would not require planning permission. In its 'Statement of Costs', it accepts that 'proportionate costs' for the preparation of a supporting statement' should be awarded.
6. Similarly, in respect of Costs Application B, the Council accepts the Appellant's case, and that proportionate costs should be awarded.
7. It is quite clear to me that the Council's error amounted to unreasonable behaviour leading to unnecessary expense. Costs should, therefore, be awarded. However, my decision should not be read as limiting these costs to the preparation of the statement. Why it should be limited to this, as suggested by the Council, when there might be other costs such as the completion of forms and submission of the appeal, has not been explained. The Council makes the point that the various appeal statements have a degree of similarity, and this should be reflected in any award of costs. This might well be the case. However, I should make it clear that my role is not to determine the amount of costs to be awarded, it is simply to assess whether an award should be made.
8. The Council refutes Costs Application C. Its main case in response is that the appeal was unnecessary, as it had granted planning permission for an application for the same scheme². That decision, it says, was dated 8 October 2020. I have not been provided with a copy of the decision; however, as the Claimant has not countered this, I take it to be the case that the scheme was approved on that date.
9. In support of its position, the Council also states that the application for a certificate that is the subject of this costs application, and the application which formed the subject of appeal APP/T5150/W/20/3260886, referred to the property as a maisonette.
10. That application 20/1749 was not validated has been shown to be wrong, as the property is a dwellinghouse and therefore the application was made on the correct forms. I have been given no mitigating reasons as to why this was not addressed by the Council, despite having been told of its mistake.
11. Whilst application 20/2468 was made for the same scheme, the Claimant could not be sure that this would succeed. I note that the decision on that application

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Council reference 20/2468

and the appeal were made on the same day. I have not received evidence to show that the Appellant had received the Council's decision before she submitted her appeal. In the circumstances, I find that this meant that the Claimant incurred unnecessary expense.

12. On the question of the description of the various applications, what the Council says is wrong. Neither application form uses the word maisonette in the description of development and the application submissions make it clear that the property was a dwellinghouse. The references to maisonette are made in the Council's decision notices.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and an award of costs, in respect of the three costs applications, is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council for the London Borough of Brent shall pay to Mrs Wendy Deacon, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. Mrs Wendy Deacon is now invited to submit to the Council for the London Borough of Brent, to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Curnow

INSPECTOR