



Costs Decision

Site visit made on 31 May 2022

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2022

Costs application in relation to Appeal Ref: APP/T5150/D/22/3295968 271 Kenton Road, Harrow, HA3 0HQ

- 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 A Patel 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 the construction of a part single-storey, part two-storey rear extension.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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.
3. The proposal relates to the construction of a full-width, single-storey rear extension, with a part-width first floor extension above, at the dwelling at No 271 Kenton Road. The refusal of planning permission related only to the depth and height of the single-storey element of the extension around the boundary with No 269, and its impact on the amenities at that neighbouring property.
4. The PPG indicates that unreasonable behaviour may include the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In this case, the Council's analysis of the impact of the proposal on amenity relied solely upon guidance in its own Supplementary Planning Document on Residential Extensions and Alterations (SPD). The relevant section of the SPD used by the Council refers specifically to neighbouring houses and neighbouring residential amenity. However, the neighbouring property at No 269 is a Dentist's Practice and not a house. This is clear from viewing the properties, and the appellant has also provided evidence that the use as for dental purposes may have existed since 1995.
5. Since the Council would be expected to have known that No 269 was not a house in residential use at the time of this application, I consider that it has relied in its assessment on significantly inaccurate assertions about the impact of the proposal on the amenities of the occupiers of No 269, which do not, in this case, include residential amenities.

6. Finally, the Council maintains that there has been no Certificate of Lawful Development issued for such an extension, and that this justifies its decision to effectively ignore the fall-back position relating to permitted development (PD) rights in its deliberations. However, the lack of a Certificate of Lawful Development does not affect the fact that no Prior Approval is required for the proposed single-storey rear extension, and that a similar extension with similar impacts on the amenities at No 269, could be constructed under PD rights.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 of the London Borough of Brent shall pay to Mr A Patel, 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.
9. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J D Westbrook

INSPECTOR