
Costs Decision

Site visit made on 7 July 2022

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Costs application in relation to APP/T5150/D/22/3296886 9 Dicey Avenue, Brent, London, NW2 6AR

- 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 Mohammed Salim for a full award of costs against London Borough of Brent Council.
 - The appeal was against the refusal of planning permission is erection of a part single and part two storey rear extension and enlargement of rear dormer.
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Decision

1. The application for a full award of costs is allowed.

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. The PPG makes it clear that a Local Planning Authority (LPA) is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact with are unsupported by any objective analysis.
3. The appeal followed the refusal of permission on 5 April 2022 of an application made on 7 February 2022 for erection of a part single and part two storey rear extension and enlargement of rear dormer. There was a single reason for refusal which was concerned with the impact of the proposal upon the residential amenity of adjoining occupiers at 7 Dicey Avenue with regard to loss of light, outlook and increased sense of enclosure. This refusal reason was specific to the ground floor rear extension. My decision, which accompanies this costs decision, disagreed with the Council's decision and allowed the appeal.
4. The appellant's cost application is based upon the claim that the ground floor rear extension, upon which the refusal reason was based, is identical to previous schemes under references 20/2069 and 22/0154 respectively and the Council have failed to consider this fallback position within their assessment. The claim is made on a substantive basis relating to the issues arising from the merits of the appeal itself – the latter outlined within the costs stated to be claimed (that the appellant has had to appoint a planning consultant to undertake the appeal has resulted in unnecessary expense). The Council have been sent a copy of this costs application but no reply has been received.

5. The Council's report acknowledges both the prior approval under ref: 20/2069 and the certificate of lawfulness under ref: 22/0154, however, they consider that the schemes could not be considered within the determination of the appeal or carry little material weight respectively. Whilst I find that the presence of the applications in question may not change the assessment in terms of neighbouring impact, it still falls to then consider whether there are material considerations which are relevant to the site and proposal in question. A fallback is a material consideration and this should be taken into account and considered against other implementable options.
6. As stated in my appeal decision the planning history for the site demonstrates clear intent to extend the property with the ground floor element being unchanged across what is now three applications. The appellant could then subsequently apply for permission for the first floor element and dormer enlargement which have been considered as acceptable in the Council's assessment. It is evident to me that if this appeal was allowed this would be the route the appellant would follow resulting in the same proposal before me being constructed in a phased manner, rather than in one go.
7. The previous applications demonstrate the appellant could construct the ground floor element in the event the appeal had failed. I therefore find the fallback position, for the element upon which the refusal was based, to have passed the real prospect test and thus it is a material consideration which should have been taken into account when considering what is essentially guidance within Brent's Supplementary Planning Document 2: Residential Extensions and Alterations 2018 (SPD2).
8. It can be seen from my decision that I found there were insufficient grounds to refuse the appeal as a result of my findings for the refusal reason. In failing to produce relevant evidence to support all of the reason to refuse planning permission, I consider that the Council has acted unreasonably resulting in unnecessary expense for the appellant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 London Borough of Brent Council shall pay to Mr Mohammed Salim the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to issues relating to whether or not the proposal can be appropriately serviced in terms of refuse and recycling collection; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to London Borough of Brent Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Eleni Randle

INSPECTOR