
Costs Decisions

Site visit made on 28 June 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th August 2022

Costs application in relation to Appeal Ref: APP/H1515/W/21/3277508 Lion Lodge North, The Avenue, Brentwood, Essex CM13 3RZ

- 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 Mario Kempe for a full award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of planning permission for ground floor extension at side (eastern) and rear (northern) elevations. Internal alterations including provision of ensuite cloakroom at first floor level. Partial removal of utility room enclosure and removal of pergola.
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Costs application in relation to Appeal Ref: APP/H1515/Y/21/3277528 Lion Lodge North, The Avenue, Brentwood, Essex CM13 3RZ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mario Kempe for a full award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of listed building consent for ground floor extension at side (eastern) and rear (northern) elevations. Internal alterations including provision of ensuite cloakroom at first floor level. Partial removal of utility room enclosure and removal of pergola.
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Decision

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

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 application for a full award of costs is on the basis that the Council acted unreasonably on procedural and substantive grounds as it did not sufficiently engage with the applicant or determine the application in a timely manner. The applicant also suggests that the Council failed to have sufficient regard to the evidence contained in the applicant's Design and Heritage Statement (DHS) and the design of a similar extension at the other lodge building immediately south of the appeal site, and did not articulate its concerns with the proposal.
4. The Council engaged with the applicant during the course of the applications, but this was principally restricted to the use of its pre-application advice

service. Ultimately the Council identified areas of concern, including with regard to the DHS. This was not, however, to the satisfaction of the applicant, as it did not give him the opportunity to produce evidence that would address the Council's concerns. Based on the advice set out by the Council regarding the approach to an extension to the building, it is uncertain that further engagement would have led to resolution of concerns regarding the design and siting of the proposal. Indeed, the Council's advice pointed to the submission of a new scheme based on such evidence. While determination of the applications was ultimately delayed by such actions, I do not consider that the Council exhibited deliberately disruptive behaviour in doing so.

5. In my main decision, I referred to the extension built on the south lodge but identified differences between the siting of that extension and the proposal in relation to the original lodge buildings. Although the Council's reasons for setting the existing extension aside could have been more clearly articulated, it was reasonable for it to not come to the same conclusion as the applicant or to take the same view that it did when that scheme was granted.
6. The Officer Reports referred to the DHS, but they did not outline any clear evidence to dispute the applicant's case that fabric that would be lost would likely be modern. The Reports also failed to clearly articulate the Council's concerns regarding the design and siting of the appeal scheme and I note that the pre-application response did not form part of its formal determinations so could not be relied upon to demonstrate this.
7. In the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should not have been permitted. Had the Council's Officer Report been clearer, the applicant may have been able to approach the appeal differently or not pursue it. The refusal of consent and planning permission, by advancing vague assertions about the proposal's impact, unsupported by any objective analysis of the applicant's evidence, therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG.
8. I turn then to the matter of unnecessary or wasted expense. The applicant's evidence for both appeals was straightforward and included a short rebuttal of the Council's case. It appears to me that, in reality, there has been so little extra work that it can be regarded as 'de minimis'. In fact, the applicant has quickly and succinctly set out his case and responded to the Council's case without wasting expenditure.
9. As a result, although I find that the Council acted unreasonably, it has not caused unnecessary or wasted expense. Therefore, an award of costs is not justified.

Paul Thompson

INSPECTOR