



Costs Decision

Site visit made on 18 August 2022

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Costs application in relation to APP/U5360/D/22/3295432 52 Cranwich Road, Hackney, London, N16 5JN

- 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 Israel Kahan for a full award of costs against London Borough of Hackney Council.
 - The appeal was against the refusal of planning permission for the excavation of basement and erection of extension to existing ground floor extension.
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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 which are unsupported by any objective analysis.
3. The appeal followed the refusal of permission on 17 March 2022 of an application made on 23 December 2021 for the excavation of basement and erection of extension to existing ground floor extension. There was a single reason for refusal which was concerned with the impact of the proposal upon the character and appearance of the surrounding area. This refusal reason was specific to the extension to the existing ground floor extension. My decision, which accompanies this costs decision, disagreed with the Council's decision and allowed the appeal.
4. The appellant's costs application is based upon the claim that the Council have failed to take into account existing extensions within the immediate area which could reasonably have been seen from aerial imagery when concluding that the proposal would fail to respect the character and appearance of the area. It is also claimed there is inconsistency in decision making. The claim is made on a substantive basis relating to the issues arising from the merits of the appeal itself.
5. The Council's report acknowledges that the terrace within which the house is located is homogenous terrace in which rear extensions are a characteristic. At the top of page two the Council themselves have provided images of the front

elevation and rear of the terrace in which a larger extension, on a neighbouring property, is clearly visible separated by only one property from the appeal proposal. This I found to be of a comparable scale to the proposal before me on the basis that it would result in the extension being full width and extending a further 2.5m in depth than the existing. I find that based on very simple evidence, such as aerial images, it is evident there are a number of large extensions within the immediate area and within the terraced row which the Council appear to have failed to take into account in their assessment. Whilst a discussion is provided, within the costs rebuttal, there is no evidence of assessment of the character of the area and the terraced row when looking at the submitted delegated report.

6. Within the cost rebuttal the Council state that when making their assessment this included assessing the proposal against the prevailing pattern of development within the immediate context of this site. In making this assessment, within the immediate context of the site, it is stated that this included assessing the proposal against the terrace within which the property is located (32-60 Cranwich Road) (paragraph 4). Despite this it is then stated, in paragraph 8, that due to the separation in the terrace from the appeal site to no. 36 it was not considered to constitute the immediate context of the site in terms of form and massing. I find therefore that the Council are unclear, and inconsistent, as to their approach in what constitutes the immediate context of the site and overall, the surrounding area, as referenced within the refusal reason.
7. The Council's response to this costs application now states that the extensions at 42 and 46 Cranwich Road extend 4m beyond the rear outrigger as opposed to the appeal proposal at 5.5m. Such detail was not included within the Council's assessment at the point a decision was made. The delegated report states only that the scale of the extension is *larger than others within the terrace*. I find that this statement, within the Council's report, does not evidence reasoned assessment as to the actual impact of being larger as is now stated and outlined within the costs rebuttal.
8. The Council state that the extensions that have been highlighted by the appellant were given limited weight in the consideration of the refused application, however, there is no evidence of such an assessment, or application of weight to them, within the delegated report. The report does not respond to the then applicant's submission. The only consideration outlined within the Council's report was, as previously stated, that the proposal was larger than others within the terrace. The Council's comments, within this costs application, regarding 36 Cranwich Road are noted, however, it is now acknowledged that what was built extends further than 4m from the rear wall of the outrigger and that it appears immune from enforcement action. It is, therefore, now part of the terraced row within what the Council noted as the immediate context of the site.
9. In addition to this the refusal reason references London Plan 2021 Policy D3 and the Hackney Residential Extensions and Alterations Supplementary Planning Document 2019. Whilst this policy and guidance is listed, on page four of the Council's report, as of relevance to the proposal the Council's report fails to assess the proposals against this specific policy and guidance. I find that this fails to demonstrate how the proposals are considered to be contrary

to them or their overall objectives as stated within the conclusion and stated refusal reason.

10. I note that the Council outlines that a revised proposal has been submitted, and approved, at the appeal site since the refusal of the proposal which is the subject of this appeal. No details of this are before me and I find it of limited relevance to this application for costs.
11. Reference to a decision at 38 Cranwich Road by the appellant was noted but the Council will see, from my appeal decision, that this was acknowledged in Other Matters but not given weight in the decision as a result of the delegated report not being included in submissions. This omission meant I was unable to understand the context for the decision made, in this case that it is stated to have been based on a lawful fallback position, notwithstanding the fact each case must be considered on its own merits.
12. I have little evidence that the Council has been inconsistent in decision making in general but overall I find that the Council has stated that the proposal would be incongruous, obtrusive and overbearing whilst providing very limited assessment to support such a conclusion within their delegated report which has resulted in the appellant taking the proposal to appeal. This was further compounded by inclusion of policies within the refusal reason against which no analysis has taken place. Based solely upon the evidence before me within the appellant's statement and Council's report, at the point of determination of the appeal, which is separate to this costs decision, I do not find the Council had acted reasonably as I find that the Council made vague and generalised assertions about a proposal's impact which were unsupported by any objective analysis.
13. 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 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

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 London Borough of Hackney Council shall pay to Mr Israel Kahan 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. The applicant is now invited to submit to London Borough of Hackney 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