



Costs Decision

Site visit made on 23 May 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

Costs application in relation to Appeal Ref: APP/Y5420/D/21/3279459 17 Franklin Street, London N15 6QH

- 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 Menachem Reicman for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of the Council to grant prior approval for the erection of one additional storey immediately above the existing building.
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Decision

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

Reasons

2. The Planning Practice Guidance ("the 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 applicant is seeking an award of costs against the local planning authority on substantive grounds.
3. Paragraph 049 of the PPG¹ gives examples of unreasonable behaviour by local planning authorities, three of which are relevant in this case. These are:
 - Acting contrary to, or not following, well-established case law;
 - Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and
 - Failure to produce evidence to substantiate each reason for refusal on appeal.
4. The applicant considers that, in refusing to grant prior approval, the Council misinterpreted Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter "the GPDO"), and therefore prevented or delayed development which should clearly be permitted. The appellant drew my attention to the *Mawbey* judgment², in which Lindblom LJ addressed the interpretation of the wording of the GPDO.

¹ Paragraph: 049 Reference ID: 16-049-20140306

² *R (Mawbey) v Lewisham BC* [2019] EWCA Civ 1016

5. A more recent judgment in *CAB Housing*³, in which among other case law Holgate J drew on *Mawbey*, specifically addressed the interpretation of Part 1, Class AA of the GPDO. The *CAB Housing* judgment was handed down in February 2022, after the appeal in this case had been submitted; I therefore gave the main parties the opportunity to comment on its relevance.
6. *CAB Housing* clarifies that control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality. This supports the Council's interpretation of the GPDO in this case. As the applicant pointed out, this does not of course mean that approval cannot be granted for additional floors. However, the case law emphasises that in determining an application for prior approval under Part 1, Class AA of the GPDO, the scope of "external appearance" and whether or not it should be taken to be wider than just the subject property itself is in each instance a question for the planning judgement of the decision maker.
7. For the reasons which are set out in my main decision, I found the visual relationship of the appeal property with the rest of the terrace of which it is part, as well as the effect of the proposed development on the wider streetscene, to be a relevant matter in considering the impact on the external appearance of the host building. I also broadly agreed with the Council's assessment of the impacts of the proposed development, and therefore dismissed the appeal.
8. Given this, I cannot reasonably conclude that the Council prevented or delayed development which should clearly be permitted. The Council's approach to determining the prior approval application is supported by case law. While the householder procedure by which the appeal proceeded does not provide for the local planning authority submitting a separate appeal statement, I found that the delegated report provided a clear assessment of the proposal against the relevant requirements of the GPDO; the single reason for refusal was therefore substantiated. Taking these points together, I do not find that the Council's actions were unreasonable in procedural terms.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

³ *CAB Housing Limited v SSLUHC & Broxbourne; Beis Noeh Limited v SSLUHC & London Borough of Haringey; Mati Rotenberg v SSLUHC & London Borough of Haringey* [2022] EWHC 208 (Admin).