
Costs Decision

Site visit made on 4 October 2022

by M Clowes BA (hons) MCD PG CERT ARCH CON MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/W5780/D/22/3292652 14 Regents Drive, Woodford Green, Essex IG8 8RZ

- 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 J Vanner for a partial award of costs against the London Borough of Redbridge.
 - The appeal was against the refusal of planning permission for basement under proposed ground floor side extension with rooms in the roof; proposed front porch and proposed single-storey rear extensions to house utility room and swimming pool.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case and the substance of the matter under appeal. The applicant's cost claim is made on the basis that the Council unilaterally changed the description of development to include reference to development that was not part of the proposal and that it led to reason for refusal 3.
4. The description of development included on the planning application form was amended by the Council to that depicted on the decision notice; 'excavation of basement. Two storey side extension above new basement with 6 dormers. Single storey front/side/rear extension. Front porch with elevational changes. Balcony at first floor side and rear elevations. Alterations to fenestrations.' The Council's description suggests that the balcony at the first floor side is new, when it is clear that the plans show alterations to an existing dormer window that includes a balcony. The Council's description is therefore somewhat misleading. Both parties agree that the description was changed and the applicant's assertion that this was done unilaterally is not contested by the Council. Whether or not it is a common and necessary practice for descriptions of development to be amended, the PPG is clear that a local planning authority should not amend a description of development without first discussing any revised wording with the applicant or their representative. Had this occurred, the error in the description could have been resolved. I therefore find that

unreasonable behaviour with respect to the procedural handling of the case by the Council has been demonstrated.

5. The Council advise that the submitted plans did not indicate the presence of the existing dormer window and balcony on the side elevation of the dwelling. The existing elevation plans are not entirely clear on this point, showing just an outline of the dormer window. However, it is clearly present on the existing floor plan. A site visit would have enabled the existing circumstances of the site and the plans to be checked. Even if site visits could not be conducted due to the circumstances of the pandemic at the time, there were other options available to the Council to obtain information about the site. The applicant had provided a photograph of the dormer window and balcony within the Design, Access and Heritage Statement which the Council have admitted was not viewed. They have therefore failed to fully assess the information before them.
6. Notwithstanding the above, the applicant suggests that the appeal proposal does not include any change to the existing side dormer and balcony. Both the proposed floor and elevations plans before me, clearly indicate an intention to extend the existing side dormer window forwards. It was therefore right that the Council consider the proposal before them. However, it was the misleading change to the description, misinterpretation of the plans, failure to consider supporting information and failure to conduct a site visit, which led to the proposed alterations to the dormer being wrongly considered as an entirely new addition. The officer report gives scant consideration of the circumstances of the site and makes an assumption about the impact of the proposal on the living conditions of the neighbouring occupiers. I therefore find unreasonable behaviour with regard to the substance of the matter of the appeal. I accept that there were other reasons for refusal and that an appeal may not have been avoided. However, the applicant has incurred costs in defending reason for refusal 3 in the appeal.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial 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 Redbridge shall pay to Mr J Vanner, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's third reason for refusal which concerned alleged conflict with Policies LP26 and LP30 of the Redbridge Local Plan 2015-2030 (2018).
9. The applicant is now invited to submit to the Council of London Borough of Redbridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.