



Costs Decision

Site visit made on 25 October 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Costs application in relation to Appeal Ref: APP/Q5300/W/22/3290245 10 Oak Avenue, Enfield, London EN2 8LB

- 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 C & V Komodromos for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the grant subject to conditions of planning permission for 'Variation of condition 2 of 19/00645/HOU to allow stairs to garden access relocated, rear patio lower by 160mm and rear doors amended (amendment of drawing P.01)- Retrospective'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises through paragraph 028 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. Costs may be awarded to any party regardless of the outcome of the appeal.
3. The appeal followed the Council's decision to approve an application submitted under section 73 of the Town and Country Planning Act 1990 (the Act) to vary a condition associated with a previous planning permission (in that case condition 2).
4. Planning Practice Guidance (PPG) advises¹ that permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.
5. Moreover, the PPG² goes on to advise that in granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

¹ Paragraph: 015 Reference ID: 17a-015-20140306

² Paragraph: 040 Reference ID: 21a-040-20190723

6. Given the circumstances of the appeal site and its relationship with the rear garden of No 12, it was not unreasonable to attach a condition seeking to secure details to reduce the possibility of overlooking. The granting of the application under section 73 also created a new planning permission and as such was relevant to that proposal and enforceable under the new approved plans. Consequently, I do not consider that the Council's actions were unreasonable in imposing a condition not attached on an earlier grant of permission.
7. While I disagreed with its view on the assessment of the proposal, and therefore whether the condition was necessary, the Council was entitled to exercise its judgement. To my mind, this amounts to nothing more than a difference of professional opinion. From the information before me, I do not find that it amounts to unreasonable behaviour. As such unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Conclusion

8. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made

C McDonagh

INSPECTOR