



Costs Decision

Site visit made on 24 January 2023

by M Clowes BA (hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 February 2023

Costs application in relation to Appeal Ref: APP/L5810/W/22/3306453

- 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 Nicholas Hartley-Aldred for a full award of costs against the London Borough of Richmond upon Thames Council.
 - The appeal was against the refusal of planning permission for 'a rear balcony at second floor level above the first floor bathroom flat roof. The area of the balcony will be within the external walls of the first floor bathroom. Access to the balcony will be gained via a doorway at the top of the staircase to the second floor. The balcony will be enclosed with an appropriate hand rail or glass.'
-

Decision

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

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 failed to properly assess the surroundings of the appeal site and failed to substantiate their reason for refusal.
4. The Council's decision notice clearly sets out the reason for refusal and the officer report explicates the reason in more detail. The applicant considers the reason for refusal related narrowly to the property of 191 Castelnau (No 191). However, in my view, it does refer more widely to the residential amenity of nearby occupants, but with particular regard to No 191.
5. The Council's reasoning is not entirely clear on what type of rooms the windows in the first and second floor flats of No 191 were considered to serve. Nevertheless, the Council has set out its reasoning in respect of the impact that it considered the creation of the proposed terrace would exert. In my decision, I have found that the Council had reasonable concerns about the impact of the proposed development on the living conditions of the occupiers of the second floor flat at No 191, which justified its decision. This matter does not amount to unreasonable behaviour on the part of the Council but highlights the difference

of opinion between the parties in respect of the planning merits of the proposal.

6. The applicant asserts that the Council did not undertake a site visit. However, it is not clear from the evidence before me whether a site visit was undertaken or not. Even if a site visit was not conducted, there were other options available to the Council to obtain information about the appeal site and neighbouring buildings. However, again it is not clear whether the approved plans for the alterations and subdivision of No 191 (planning application reference 04/4107/FUL) were reviewed and if so, whether they would have had any bearing on the Council's decision. Although I have taken a different view to the Council in respect of the impact of the proposal on outlook, daylight and sunlight and noise and disturbance, there is no evidence before me to suggest that its assessment of the proposal was fundamentally flawed. Whilst the Council's reasoning could have been better and more specifically articulated, I am not satisfied that in this instance it amounts to unreasonable behaviour.
7. Even if I were to find that the Council failed to properly consider the specific circumstances of the appeal site in respect of the 2 windows within the rear elevation of No 191, it seems to me that the Council would have refused the proposal regardless, given their concerns in relation to the potential for the development to give rise to noise and disturbance more generally and their consideration of neighbouring occupiers beyond No 191. An appeal is therefore likely to have followed anyway, albeit with a more confined reason for refusal. Work in addressing the issue of the impact of the proposal on living conditions was necessary to support the appeal submission overall, rather than as a consequence of unreasonable behaviour by the Council.

Conclusion

8. Although I understand the applicant's evident frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on all the evidence before me, I find that no action or inaction taken by the Council amounts to unreasonable behaviour as described in the PPG, directly resulting in unnecessary or wasted expense. Therefore, an award of costs is not justified.

M Clowes

Inspector