



Costs Decision

Site visit made on 13 February 2023

by F Wilkinson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2023

Costs application in relation to Appeal Ref: APP/U5360/D/22/3293372 38 Manor Road, Tottenham, London N17 0JJ

- 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 Zvi Goldberg for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for erection of single storey extension which extends beyond the rear wall of the original house by 5.28m, for which the maximum height would be 3m and for which the height of the eaves would be 2m.
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Decision

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

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. Unreasonable behaviour may be procedural and/or substantive.
3. The applicant claims that the Council has acted unreasonably in that it has taken into consideration irrelevant matters in terms of an objection that was not made in respect of the prior notification application; it has erroneously interpreted the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO); and has relied on previous pre application advice to refuse the proposed development. The Council disputes that it has acted unreasonably.
4. I recognise that two applications being submitted at almost the same time for the same development and with similar application references¹ could be confusing for owners/occupiers of adjoining premises. The resident of one of the adjoining premises, 40 Manor Road, has consistently objected to other applications for similar extensions to the appeal property. Given this context, I can appreciate why the Council considered that it would be unjust not to take into account the objection lodged by the resident of no. 40 to the other prior notification application² at the appeal property submitted at a similar time.

¹ Application references HGY/2021/3048 and HGY/2021/3049 (the appeal scheme)

² Application reference HGY/2021/3048

5. However, Schedule 2, Part 1, Class A of the GPDO sets out the circumstances when prior approval is required. In this case, that is where any owner or occupier of any adjoining premises objects to the proposed development. Notwithstanding the similarities between the two prior notification applications, the appeal scheme is the subject of a stand-alone application that was registered as such by the Council. In my view, the GPDO does not give discretion to take into account an objection made on another application. Consequently, the Council's stance in taking into account an objection made on a separate prior notification application was not reasonable.
6. I acknowledge the consistent approach taken by the Council regarding the acceptability of extensions to the appeal property with regard to its effect on the amenity of adjoining premises. This includes in pre application advice and in determining previous applications. However, while this may have been a relevant consideration when assessing the impact of the proposed development on the amenity of any adjoining premises, it is a moot point, as prior approval in this respect was not required.
7. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly be permitted. Prior approval for the proposed development was not required and so it should not reasonably have been refused for the reason given on the decision notice. This therefore constitutes unreasonable behaviour contrary to the guidance in the PPG and the applicant has been faced with the unnecessary expense of addressing this.

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 Haringey shall pay to Mr Zvi Goldberg, 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.
9. The applicant is now invited to submit to the Council of the London Borough of Haringey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

F Wilkinson

INSPECTOR