



Costs Decisions

Site visit made on 28 February 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Costs application A in relation to Appeal Ref: APP/M5450/D/22/3304817 16 Thistlecroft Gardens, Harrow, Stanmore, HA7 1PN

- 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 Patel for a full award of costs against the Council of the London Borough of Harrow.
- The development proposed is single storey rear extension.

Costs application B in relation to Appeal Ref: APP/ M5450/D/22/3304817 16 Thistlecroft Gardens, Harrow, Stanmore, HA7 1PN

- 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 the Council of the London Borough of Harrow for a full award of costs against Mr Patel in connection with the appeal as described above.
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Costs Decisions

1. Costs application A is partly allowed.
2. Costs application B is refused.

Costs Regime

3. 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. Whilst parties normally meet their own expenses, they are also expected to behave reasonably to support an efficient and timely process.
4. The PPG goes on to state that the award of costs can relate to either the procedural handling of the matter or substantive aspects – in relation to the merits of the appeal.
5. Examples of types of unreasonable behaviour by a local planning authority (LPA) of a procedural nature includes:
 - lack of co-operation with the other party or parties; and
 - delay in providing information or other failure to adhere to deadlines.
6. In terms of the substance of the matter under appeal, LPAs may be at risk of a costs award in the following circumstances (not exhaustive):
 - by preventing or delaying development which should clearly be permitted;
 - failure to produce evidence to substantiate each reason for refusal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - refusing to provide reasonably requested information; and

- not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management.
7. Appellants can be at risk of costs for similar reasons to the above. In a substantive context, appellants can be liable for an award of costs if material considerations are advanced and inadequate evidence is provided in support thereof.

Submissions in respect of Application A

8. The Applicant indicates that the Council has failed to confirm how the living conditions of No 14 Thistlecroft Gardens would be affected, with a lack of meaningful assessment of the scheme. The erroneous second reason for refusal relating to the cumulative effects of the extension and existing outbuilding is also raised.

Response from the Council / Application B

9. The Council submitted a response to the Applicant's claim for costs and included a counter claim on the basis that the Applicant has submitted numerous applications for similar proposals, including three that have been refused and dismissed at appeal. It also highlights that two further prior approval applications have been refused during the processing of this fourth appeal on the same site.
10. In summary, it is claimed that the Applicant has acted unreasonably by submitting similar applications without material differences which has resulted in wasted expense on the part of the Council in both determining the applications and participating in the appeal.

Response from the Applicant

11. In response to the Council's claim, the Applicant indicates that the Council has been unhelpful by not explaining why the proposals are not considered materially different given that the proposed extension is 800mm lower than existing ground floor level and given the construction of the tall boundary fence which would conceal the extension.
12. The Applicant also indicates that the Council's admission of an error in adding the second reason for refusal appears false. The Applicant suggests that the Council has an unwritten policy that requires there to be a gap of 500mm between an existing structure and any extension proposed by way of prior approval. The Applicant also highlights that the Council was aware of this and that costs have previously been awarded to him in connection with the same.
13. The Applicant also indicates that the Council has also unreasonably submitted its questionnaire after due date (due 12 December 2022 and received 15 March 2023) and after the site visit (28 February 2023).

Application A Reasons

14. In my view, the Council's case is sufficiently well explained in the submitted officer's report and I do not consider that the key reason for refusal is vague or lacks substance. Furthermore, it does not appear that the Council has wholly relied on the assertion that the closest window in the neighbouring property serving a kitchen is 'protected' under the Harrow Supplementary Planning

Document Residential Design Guide (2010) to justify the unneighbourly impacts that would arise.

15. However, the Council has since acknowledged that the second reason for refusal in relation to the amalgamation of the proposed extension with the existing outbuilding and resultant exceedances of the limitations in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) was an error. Despite the suggestion by the Applicant that this was likely to have been deliberate, I find that its inclusion has put the Applicant to wasted expense. Therefore, the costs of the appeal relating to this particular reason for refusal were unnecessary and the Applicant should be entitled to recover them.

Application B Reasons

16. The Council directly copied the Applicant into the email with its questionnaire submission after the relevant deadline, along with its counter application for costs before any decision had been taken on whether or not to accept them. The Applicant responded to the Council's claim for costs a short time later without being specifically encouraged to do so. Ultimately, the Council's late submission had no bearing on the outcome of this decision or the separate decision in relation to the Appeal itself.
17. I note the Council's concern that the Applicant has wasted expenditure on the Council's part through repeatedly submitting applications and appeals for similar proposals. However, the Council has the power to decline to determine such applications with appropriate explanation before any resources or expenses are directed towards processing activities associated with the same.
18. For reasons further elaborated in the separate appeal decision and given that not all of the other schemes have been submitted to me for comparison, as far as can be ascertained, the Applicant has not put the Council to wasted expense.

Costs Order

19. 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 Harrow shall pay to Mr Patel, the costs of the appeal proceedings described in paragraph 15 of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to the Council of the London Borough of Harrow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hollie Nicholls

INSPECTOR