



Costs Decision

Site visit made on 22 March 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Costs application in relation to Appeal A Ref: APP/U5360/D/22/3304626 7 Meynell Road, Hackney, London E9 7AP

- 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 Gibson for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of planning permission for the construction of enlarged lower ground floor level, and rear extensions at lower and ground floor levels, installation of two front-garden lightwells, new boundary treatment, along with partial enlargement of existing rear dormer window and installation of two roof-lights in the front roof slope. Installation of air source heat pumps within rear garden and photovoltaic panels to flat top section of rear roof dormer and addition of three roof lights to flat top section of rear roof dormer.
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Costs application in relation to Appeal B Ref: APP/U5360/D/22/3304625 7 Meynell Road, Hackney, London E9 7AP

- 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 Gibson for a full award of costs against the Council of the London Borough of Hackney.
 - The development proposed is the construction of enlarged lower ground floor level, and rear extensions at lower and ground floor levels, installation of two front-garden lightwells, new boundary treatment, along with re-cladding of existing rear dormer window and installation of two roof-lights in the front roof slope. Installation of air source heat pumps within rear garden and photovoltaic panels to flat top section of rear roof dormer and addition of three roof lights to flat top section of rear roof dormer.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The application for costs in this case was made by the applicant against the Council on two grounds. Firstly, in relation to the substance of the appeal and secondly in respect of procedural matters.

Substantive matters

4. There are several strands to the applicant's case for an award of costs. These are contained within the initial application for costs and the applicant's

supplementary information provided in response to the Council's costs rebuttal. These include: a) preventing or delaying development which should clearly be permitted, having regard to it being in accordance with the development plan, national policy and any other material considerations; b) a failure to produce evidence to substantiate each reason for refusal on appeal; c) vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis; d) acting contrary to, or not following, well-established case law; and e) not determining similar cases in a consistent manner.

5. Planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The Council's reasons for refusal are set out in the decision notice for each case. These reasons are complete, precise, specific and relevant to the applications. They also clearly state the policies of the development plan that the proposals, in the view of the Council, would conflict with. This is a matter of planning judgement. I have found that these reasons were adequately substantiated by the Council in its officer report for each case. Moreover, officers are entitled to take into account the advice of consultees in coming to a decision, particularly where specialist heritage matters are concerned. I do not find that the Council has acted unreasonably in these matters.
6. The applicant makes reference to the Council's assertion of a purported power to control development of the interior of a locally listed building (the appeal property). However, this refers to pre-application advice of September 2020 and it is unclear if this refers directly to the appeal schemes before me. I have no substantive evidence before me to conclude that the Council has acted unreasonably in this matter.
7. From the evidence before me, it is clear that the Council have had regard to previously approved decisions on the site. However, it is a matter of fact and degree that the appeal proposals are different. In respect of the reference to permissions at other sites, each site and location is different and the circumstances that apply there, and the planning balance, are not always directly comparable. Not least in cases where sites are located in different streets, parts of the borough or in a different conservation area. I do not find that the Council has acted unreasonably in this matter.
8. Whilst I appreciate that the applicant does not agree with the outcome of the applications, and I have made my own views on the planning merits of this case in a separate decision, I find nothing to suggest that the Council has acted unreasonably.

Procedural matters

9. In respect of the Council's contended failure to adhere to deadlines and co-operate with the applicant, the applicant has set out a series of events which took place during the course of the pre-application and planning application stages, as well as at the start of the appeal process.
10. I sympathise with the applicant in respect of delays and dissatisfaction during the pre-application stage, which they had diligently engaged in, and which have clearly caused them concern. Nevertheless, I find nothing to suggest that subsequent planning decisions were reached other than on the basis of the merits of the proposals. Pre-application advice is given without prejudice and

cannot pre-determine the outcome of a subsequent planning application, which must take account of all relevant factors.

11. The applicant claims that the Council failed to co-operate during the course of the planning application and that had they been provided with the opportunity to discuss matters, particularly the response of the heritage consultee, that a suitable response could have been provided and the appeal avoided or reduced in scope.
12. Whilst the applicant could reasonably expect a reply to queries during the course of an application, I have not been made aware that emails or telephone calls went unanswered. On the contrary, the evidence before me shows that the Council broadly kept the applicant informed of progress and responded to emails, albeit sometimes at short notice or in brief. I note that the senior colleagues of the case officer were also involved in the review of proposals. Even had the applicant formally responded to the concerns of consultees and officers prior to determination, this is not to say that the outcome of the application would have necessarily been different. Ultimately, I do not find that the Council has acted unreasonably in this matter.
13. It is apparent from the applicant's submissions that despite some frustrating delays in documentation being provided by the Council at the appeal stage, that the applicant has nonetheless had full opportunity to review and respond to submissions. I have seen no evidence of the Council deliberately delaying or concealing relevant evidence.
14. Overall, although I have reached a different judgement to the Council regarding the acceptability of the proposal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Price

INSPECTOR