
Costs Decision

Site visit made on 20 March 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Costs application in relation to Appeal Ref: APP/U5930/D/22/3311184 7 Ferndale Road, Leytonstone, Waltham Forest E11 3DW

- 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 Marcus Hermansson for a full award of costs against the London Borough of Waltham Forest Council.
 - The appeal was against the refusal of the council to grant planning permission for the demolition of an existing single storey side extension and boundary wall to make way for the erection of a two-storey side extension and single storey side extension with 1 skylight and the conversion of an existing inhabitable loft space, including terrace and 4 skylights. Alterations to the existing fenestration, replacement of windows, doors and the renovation of existing brickwork, including new boundary wall treatment.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The applicant is applying for a full award of costs against the Council on both procedural and substantive grounds.
3. Although Local Planning Authorities (LPA's) generally make most planning application documents available online for public viewing, practices vary between LPA's as to what level of information is available at what times. In this case the LPA has confirmed that all of the application documents submitted were received and would have been available to view by the Planning Officer.
4. The LPA accept that not all of the documents were initially made available for public viewing or referred to in the drawings and documents listed as informing the decision at informative 2 of the decision notice. Moreover, the LPA acknowledge that drawing number PP_300PR, the sectional drawing showing the height of the wall around the roof terrace, which was included within a package of information rather than individually, appears to have been overlooked. As a result of this reason 2 of the refusal notice was subsequently withdrawn.
5. The LPA also failed to have regard to its own most recent pre-application advice, which although not binding is a material consideration that should be

taken into account in reaching a decision. Such actions undermine and discourage the use of this service.

6. Whilst I am satisfied that the proposed drawings and a site visit would have provided the LPA with sufficient information on which to make a decision, the failure of the LPA to consider all of the information submitted or to have regard to its own latest pre-application advice would amount to unreasonable behaviour.
7. Although consideration of the pre-application advice and the overlooked drawing, would not necessarily have resulted in a different outcome, it would have avoided the second reason for refusal, which the applicant has clearly spent time on addressing in the appeal submission.
8. Although it would have been helpful to the applicant to have been provided with a clear copy of the delegated report when this was requested, this failure appears to be a result of a technical issue and not a matter that resulted in unnecessary and wasted costs being incurred given that the reasons for refusal were clearly set out in the decision notice.
9. It is evident that some copying and pasting has taken place within the LPA's report, without appropriate checks and amendments being made. However, there is nothing to suggest that the LPA did not consider this revised scheme on its own merits.
10. The LPA clearly has entered into pre-application discussions with the applicant, where its concerns were raised, and it has dealt with this proposal in a consistent manner to the previous application and appeal decisions on the site, all of which repeatedly refer to the inappropriate scale and massing of the rear extension in relation to the original dwelling and its surroundings.
11. There is no doubt that the LPA made multiple errors in its consideration of the application and in its report. Its failure to consider all relevant information also led to an unjustifiable reason for refusal that was subsequently withdrawn during the appeal process. Whilst the appeal would have been submitted anyway, addressing reason 2 of the refusal incurred additional time and expense for the applicant.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 London Borough of Waltham Council shall pay to Mr Marcus Hermansson, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in defending the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to the London Borough of Waltham Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Bartlett

INSPECTOR