



Costs Decision

Site visit made on 3 April 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2023

Costs application in relation to Appeal Ref: APP/M5450/X/22/3301565 26 Merivale Road, Harrow HA1 4BH

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Desmond Fernandes for a full award of costs against the Council of the London Borough of Harrow.
- The appeal was against the refusal of a certificate of lawful use or development for the construction of a rear dormer and 2 velux windows.

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an 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. Paragraph 049 of the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. It sets out that examples of unreasonable behaviour include: 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; acting contrary to, or not following, well-established caselaw; and, not determining similar cases in a consistent manner.
4. The applicant's case is that the Council incorrectly assessed the proposal against the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) – for the enlargement, improvement, or other alteration of a dwellinghouse. They consider that the Council have ignored the fact that Schedule 2, Part 1, Class B of the GPDO is the only class under which roof alterations and extensions are permitted. They also consider that the Council's refusal is based on stipulations that are not included within the relevant provisions of the GPDO, and that it has failed to determine similar cases along the same street in a consistent manner.
5. In its rebuttal, the Council considers the fundamental issue to have been the proposed dormer sitting partially above the flat roof form of the dwellinghouse's original rear outrigger. It is concerned that the dormer would sit on top of the flat roof of the rear outrigger and in effect create a second floor extension as opposed to a pure roof extension. On this basis, it has assessed the proposal under the criteria set out in Class A.

6. It can be seen from my decision that I have found in the applicant's favour, and that the criteria set out in Class A was irrelevant to an assessment of lawfulness in this case. I find the Council's justification for assessing the proposed development under the criteria set out in Class A to be unclear and incoherent. Therefore, I am not satisfied that the Council has been able to clearly substantiate its reason for refusal and instead has relied on vague and inaccurate assertions, and the misapplication of relevant legislative provisions as set out in the GPDO. In doing so, the Council's refusal has prevented development which should clearly have been permitted.
7. Furthermore, I have been presented with the details of four other developments in the local area for similar rear facing dormer extensions where the Council have issued certificates of lawful development, and without applying the criteria contained within Class A. The Council now suggest that these may have been erroneously deemed lawful. However, I do not find this to be a plausible defence, and instead it appears that these other developments were assessed with reference to the correct legislative provisions.
8. In discharging its planning functions, it is reasonable to expect the Council to have a good understanding of permitted development rights and the practical application of the various limitations, conditions and interpretations set out in the GPDO. In order to maintain public trust and confidence in the planning system, applicants should also expect similar development proposals to be determined in a consistent manner – that has not happened in this case.
9. Bringing all these points together, the Council has been unable to substantiate its reason for refusal and it has failed to correctly apply the legislative provisions of the GPDO. It has therefore prevented or delayed development that should have been permitted, and it has not determined similar cases in a consistent manner. Therefore, I am in no doubt that the Council's actions in these regards amount to unreasonable behaviour. As a direct result, the applicant has been faced with the unnecessary expense of lodging the appeal.
10. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Desmond Fernandes, 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.
12. 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.

J M Tweddle

INSPECTOR