



Costs Decision

Site visit made on 11 July 2023

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Costs application in relation to Appeal Ref: APP/T5150/W/22/3312444 272 Dollis Hill Lane, London, NW2 6HH

- 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 Riaz Datoo, 31 MAR Ltd, for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for the extension and conversion of existing detached house to form a pair of semi-detached houses.
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Decision

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

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. Unreasonable behaviour can relate to procedural matters (i.e., the appeal process) or substantive matters (i.e., issues related to the planning merits of the appeal). Examples include: providing information that is shown to be manifestly inaccurate or untrue; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable and not determining similar cases in a consistent manner. The application for costs relates to each of these examples.
4. The Council's first reason for refusal as set out in the decision notice is specific and relevant to the application and states the policies of the Local Plan which it would conflict with. The Council's officer's report and appeal statement set out the reasoning for why the application was refused on this issue. My attention has been drawn to a previous application which the Council approved on the site. The Council have confirmed this and have referenced their previous decision in both the officer's report and the appeal statement. It will be seen from my decision that there were sufficient grounds for refusing outline planning permission due to the scale of the development conflicting with the development plan policies set out in the decision notice. I am therefore satisfied that in this regard the Council adequately substantiated the first

reason for refusal and consequently the appeal could not have been avoided altogether.

5. The Council's second reason for refusal related to the building's position within the Root Protection Area of an adjacent street tree which was considered to be detrimental to the health of the tree, and the failure to provide a tree survey or tree protection plan failed to demonstrate that harm would not be caused.
6. My attention has been drawn to the previous appeal¹ on the site which was determined after the appellant lodged this appeal and both parties have had the opportunity to comment on it. The Council did not withdraw this reason for refusal and instead in seeking to substantiate this reason for refusal continue to rely upon comments from their Tree Officer, the lack of detail regarding the tree protection methods and that the use of a condition to resolve this issue would be unreasonable stating that the footprint, characteristics and building line of the appeal scheme and current scheme are notably different.
7. The applicant has provided evidence which shows that this current appeal scheme has a smaller footprint than the previous appeal scheme, albeit does extend slightly further into the Root Protection Area. It is evident from the previous appeal decision that the Inspector had addressed this matter concluding that a tree survey could be required as a pre-commencement condition. Given the similarities in terms of the footprint of the previous appeal scheme and the current appeal scheme, the Council have therefore not provided any substantive evidence to justify why it has persisted in objecting to that element of the scheme.
8. Whilst the Council did not prevent development that should clearly be permitted, their second reason for refusal was unreasonable in light of the previous Inspector's decision. Therefore, it should not have been necessary for the appellant to address this issue and some unnecessary expense as part of the appeal process will have been incurred. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

Costs Order

9. 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 London Borough of Brent shall pay to Mr Riaz Dato, 31 MAR Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's view that the proposal would have a harmful effect on the street tree.
10. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

¹ APP/T5150/W/22/3299035

L Reid

INSPECTOR