The Planning Inspectorate

Costs Decision

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Costs application in relation to Appeal Ref: APP/Q5300/X/22/3298504
24 Livingstone Road, Southgate N13 4SD

- 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 Mrs L Sohawon for a full award of costs against the Council of the London Borough of Enfield.
- The appeal was against the refusal of a certificate of lawful use or development for a proposed loft conversion and roof extension and with associated internal and external works.

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 PPG[1] explains 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, for example, by failing to produce evidence to substantiate each reason for refusal, or granting planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way. Although these examples refer to applications for planning permission, the same could be applied to applications for a certificate of lawful use or development (LDC).

4. The applicant claims that a lack of understanding by the Planning Officer and his inexperience of measuring plans resulted in inaccurate information being extracted from the submitted plans. The applicant also states that if the Planning Officer considered that insufficient or inaccurate information had been provided then the application should have been refused on those grounds.

5. In an application for a LDC, the onus of proof is squarely on the applicant. In this case, in order to be granted planning permission by Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), it was incumbent on the applicant to show that the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 40 cubic metres.

6. As detailed in my appeal decision, the submitted drawings did not have all relevant measurements marked on them, nor was any clear method of

[1] Paragraph: 049 Reference ID: 16-049-20140306

calculation of cubic volume provided. Furthermore, by the applicant's own admission it was stated on the submitted plans that they should not be scaled from. Accordingly, insufficient information had been provided to demonstrate that the proposed development fully complied with Part 1, Class B of Schedule 2 of the GPDO.

7. Whilst it could be argued that the Planning Officer should not have attempted to calculate the additional cubic content from plans that were marked "should not be scaled" and instead referred to insufficient information being provided, I cannot see how this would have resulted in any outcome other than the application being refused. An appeal would therefore have still been necessary in order to challenge the decision that the proposed development was not lawful.

8. Seeking to demonstrate that the appeal proposal is lawful, the applicant has referred to a subsequent application[2] for a LDC which was granted at the property in April 2022. Although the applicant considers that the two applications were identical in every aspect, as outlined in my appeal decision this was patently not the case given the additional information provided on the submitted drawings. Consequently, the applications were not identical and the evidence base had clearly changed and I do not find that the Council has acted unreasonably in this regard.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR

[2] Council Reference: 22/00324/CEA