



Costs Decision

Site visit made on 24 August 2023

By S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023

Costs application in relation to Appeal Ref: APP/V5570/W/23/3315605 84 Gillespie Road, Islington, London, N5 1LN

- 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 Ms Natalie Abrahams of OCNA Ltd, for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal to grant planning permission for the subdivision of the building into two residential units. Single storey rear extensions at ground, first and second floor levels including external terrace area at second floor level, rear dormer roof extension, solar panels and rooflight to front roof slope and new rooflight to ground floor front projection. Change of use of the existing ground floor shop space to residential use including removal of shopfront, new and replacement fenestration to the rear and replacement fenestration to the front and associated works without complying with a condition attached to planning permission Ref P2022/0004/FUL, dated 15 July 2022.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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. The applicant considers that the Council has exhibited unreasonable behaviour in accepting, validating and determining the original planning application and also requiring them to submit a Deed of Variation. However, an application under Section 73 of the Act cannot be used to obtain a planning permission that would require variation of the description of development for which permission was originally granted. As the appeal proposal seeks the variation of the No 2 'plans condition', in order to relocate the external terrace area at the rear of the property, from the second floor level to the third floor level, it is beyond the powers available under Section 73 and therefore cannot be made.
4. The reasons why the Council refused the application are clearly set out in the decision notice and are not vague, generalised or inaccurate, insofar as they relate to issues identified by the Council. However, those reasons do not deal with the incompatibility between the original planning application and Section 73. Had the Council identified the issue regarding Section 73 earlier on in the process and rejected the application at the outset, it is unlikely that appeal would have proceeded, thereby reducing development costs, including those associated with the Deed of Variation (albeit no such document was submitted

within the timescales set out in the Procedural Guide for Planning appeals or at any other time during the determination of the appeal).

5. When I raised this issue, the Council accepted that the appeal would fail the test set out in *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council* (C1/2018/2922) ("Finney") and the appeal should therefore not be allowed. Instead, the changes would need to be considered under a fresh full planning application. The applicant's response also accepts the deficiencies with the original planning application and submitted a proposal to submit amended plans for the appeal. Prior to my query, neither side communicated to the other that "Finney" should have been a relevant factor in their considerations, either during the application or appeal process.
6. In that sense, the Council failed to have regard to government policy within the context of "Finney" and Section 73. However, the applicant also pursued a clear "no hope" case, insofar as there was no reasonable prospect of the appeal succeeding. As a result, I find that both parties were at fault in how they determined this matter at both the application and the appeal stage, including the costs associated with the Deed of Variation. While it is regrettable that the procedural issue was not identified earlier on the process, there is a shared responsibility between the Council and the applicant to ensure that the original planning application was technically feasible.
7. In relation to this shared responsibility, there is no evidence that the applicant has been significantly disadvantaged due to a lack of planning expertise, given that they have worked with professional consultants throughout this appeal. Both parties held the erroneous belief that the original planning application could proceed. Due to this shared culpability, I find that neither party bears lone responsibility for this error in the appeal process and therefore an award of costs against the Council, in relation to both accepting the original planning application and the costs associated with the Deed of Variation, is not justified.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Lo

INSPECTOR