



Costs Decision

Site visit made on 24 October 2023

by K Lancaster BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Costs application in relation to Appeal Ref: APP/U5360/W/23/3319607 50 Olinda Road, Hackney, London N16 6TL

- 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 EALINGRYDAL LTD for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the grant subject to conditions of planning permission for the erection of a first-floor rear extension.
-

Decision

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

Reasons

2. 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. Parties in planning appeals normally meet their own expenses. However, the 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 appellant is seeking a full award of costs on substantive grounds. The applicant alleges that the Council failed to provide evidence to substantiate each condition, provided vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and acted contrary to, or not following, well-established case law.
4. In relation to established case-law, no substantive evidence has been provided to demonstrate that the Council acted contrary to well-established case law, which relates to decisions of a court and not other decisions issued by the Council. Therefore, I find that the Council has not acted unreasonably in this regard.
5. The applicant alleges that the Council has failed to substantiate the reasons for imposing the disputed conditions. However, the Council considers that conditions No. 4, 5 and 6 comply with all of the requirements contained within Paragraph 206 of National Planning Policy Framework (the Framework) and are necessary to make the development acceptable. The Council's officer's report sets out specifically the reasons why the conditions are considered to meet the six tests set out in Paragraph 206 of the Framework, and identified the relevant policies of the Hackney Local Plan 2020 (HLP).

6. Whilst it will be seen from my decision that I have taken a different view; the Council's evidence is not so inadequate or irrational so as to justify unreasonable behaviour with respect to the substance of the matter of the appeal when making its decision on the planning application
7. Whilst I recognise that there appears to have been some initial post-decision confusion as to the planning agent who was involved with the scheme, in the absence of any confirmation of a change in agent from the applicant, and whilst this may have been frustrating in terms of delays to requests for information, the Council did not act in a way that amounts to unreasonable behaviour. It is clear from the Council's response that once they had received confirmation that Mr Posen was authorised to act on behalf of the applicant, they engaged in communication with Mr Posen in relation to the disputed conditions. In their response the Council set out their reasons for imposing the conditions, of which conditions No.5 and 6 are largely based on advice from the Council's Drainage Team.
8. Paragraph 38 of the Framework states that local planning authorities should approach decisions on proposed development in a positive and creative way. It also states that decision-makers at every level should seek to approve applications for sustainable development where possible. I acknowledge that the original stance of the Council was to recommend refusal of the scheme, and that it was only after further information was submitted in support of the application that a positive recommendation agreed. However, this is not uncommon when a Council considers an application and I disagree with the applicant that this amounts to the Council acting unreasonably.
9. Whilst the applicant and the Council disagree in relation to the use of the disputed conditions, these appear to have been agreed by the applicant's former agent prior to issuing the decision. It was only after this permission was granted where it has been questioned as to whether these conditions meet the relevant tests. Furthermore, I have not been presented with any compelling evidence that the Council would not have determined an application to vary the condition had such an application been submitted. Therefore, the applicant did not incur unnecessary or wasted expense.
10. For the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Lancaster

INSPECTOR