The Planning Inspectorate

Costs Decision

Hearing held on 18 October 2023

Site visit made on 18 October 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Costs application in relation to Appeal Ref: APP/M5450/C/23/3316669
41 Argyle Road, Harrow HA2 7AL

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Bhavin Shah for a full award of costs against the Council of the London Borough of Harrow.
- The appeal was against an enforcement notice alleging (1) the unauthorised construction of a first floor side extension and (2) the unauthorised construction of a hip to gable and rear dormer roof extension.

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[1] 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. Unreasonable behaviour can be either substantive[2] – relating to issues arising from the merits of the appeal, or procedural[3] – relating to the process.

3. The applicants claim that the Council had not substantiated its position as they had acknowledged the existence of a fallback position which would enlarge the roof following compliance with the notice, that the fallback position would be worse than the existing development or the alternative schemes, and that the previous Inspector found that the main adverse impacts of the development were to the rear only. It is also considered that the Council acted unreasonably by introducing a new argument during the hearing, and by not disputing the appellants ground (g) appeal.

4. At the hearing the Council accepted that, in principle, there could be a fallback position provided the appellant first complied with the requirements of the enforcement notice. It is established case law that to be a material consideration, the prospect of the fallback position does not have to be probable or even have a high chance of occurring, it has to be only more than a theoretical prospect.

5. However, in *Simpson v SSCLG & Medway Council [2011] EWHC 283 (Admin)* it was held that the fallback position must also be identified in sufficient detail so

[1] PPG Paragraph: 030 Reference ID: 16-030-20140306
[2] PPG Paragraph: 049 Reference ID: 16-049-20140306
[3] PPG Paragraph: 047 Reference ID: 16-047-20140306

that it may be compared to what is alleged. Put simply, it also needs to be established whether the fallback position would be less desirable than that for which planning permission is sought.

6. As can be seen from my appeal decision, I found that given the lack of detail provided, it was not possible to assess whether any fallback would have similar or worse visual consequences than that for which planning permission was sought. It was therefore not possible for the Council to form any meaningful view as to whether the fallback position would be more harmful in planning terms than either the as built development or the proposed alternative schemes.

7. In relation to the applicants reading of the 2022 appeal decision[4], I do not agree that the main adverse impacts of the development were found to be at the rear of the property only. Paragraphs 13 and 14 of the 2022 appeal decision clearly include concerns regarding the hipped roof design of the first-floor side extension and the hip-to-gable alterations, which are clearly visible from the front of the property on Argyle Road. They are also expressly referred to in paragraph 19 of the 2022 appeal decision, which concludes that the development overall is harmful to the character and appearance of the host property and immediate locality.

8. The applicants also contend that the Council introduced a new argument at the hearing. This argument was essentially that following compliance with the enforcement notice by building the development in accordance with planning permission P/2648/18, the construction of a hip-to-gable alteration would not be permitted development by virtue of paragraph B.1 (c) of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO").

9. This discussion however took place in the context of the potential fallback position, which was an argument put forward by the appellants in advance of the hearing. Whether the fallback position would or would not amount to permitted development under the GPDO is an important factor to establish, and the Council did not act unreasonably by stating their position on the matter.

10. Finally, it was clear from the Council's written submissions that they considered that the six month compliance period stated in the notice was sufficient, and that the requested extension was not supported. In any event, even if the Council had conceded its position in relation to this ground, given that the ground (a) and (f) appeals and their complexities would have remained, the hearing would not have been avoided. Accordingly, this did not result in the applicants incurring any wasted expense.

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

David Jones

INSPECTOR

[4] APP/M5450/D/22/3295890