



Costs Decision

Site visit made on 4 December 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Costs application in relation to Appeal Ref: APP/Q4245/W/23/3324264 Oak Trees, Hawley Lane, Trafford, Hale Barns WA15 0DR

- 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 Simon Gallop for a full award of costs against Trafford Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of existing garage and construction of new dwelling with associated landscaping.
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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 applicant's lengthy costs application and rebuttal to the Council's response are all made in writing and there is not therefore a need to rehearse them here. Similarly, this costs decision is not the place to re-run the merits of the appeal which are set out in my decision.
4. The applicant asserts that unreasonable behaviour occurred during the course of both the planning application and the appeal. The PPG advises that whilst costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. I note the costs decision which the applicant has referred to, suggesting that it sets a precedent for allowing an award of costs in which behaviour during the application process was taken into consideration. Be that as it may, I do not have all the details of that case before me and, nevertheless, it is important to note that each case will be specific to the circumstances which applied at the time and thus cannot be directly comparable.
6. The applicant's concerns largely centre around the communication received by the Council during the course of the planning application. I have been provided with a chronology of events and note the various back and forth communication between the Council and the applicant over the course of roughly three months.

7. During this time, I note that a meeting request was declined by the Council, that there was some confusion regarding whether amended plans would be accepted and that there were suggestions that the applicant applies for pre-application advice.
8. I also note the suggestions that the Council requested amendments to overcome particular concerns, then it subsequently failed to include a reason for refusal relating to this matter despite purportedly refusing the application on an earlier set of plans.
9. Linked to this, the applicant also asserts that there was some confusion on the sets of plans which the Council based its decision on. The Council admits to this error. Further, concerns are raised that the Council did not publish amended plans on their website, suggesting that third parties would not have had sight of them during the application or the appeal. The evidence before me supports this claim.
10. Based on the above, it seems to me that the Council's approach to the assessment of the planning issues was unclear at times and that its behaviour was somewhat unhelpful and confusing for the other parties. There were clearly some misunderstandings and disagreements during the planning application process.
11. However, the confusion was not solely due to the Council's behaviour. The applicant stated to the Council that they wish for it to base its decision on the originally submitted plans, however they then went on to submit a second set of amended plans. This added to the uncertainty and therefore it is not inconceivable that the Council made its decision on an amended set of plans.
12. Despite these errors, the applicant confirms that it was clear to them what set of plans had been refused. Even had it been unclear, this matter could nevertheless have been easily resolved by the applicant prior to lodging their appeal.
13. The applicant also made it clear during the appeal that they wish for the originally submitted plans to be considered, notwithstanding the submission of amended plans, both at the request of the Council and freely by the applicant. Thus, third parties would not have been prejudiced, as the plans which they were able to make representations on are those which have since been considered. Similarly, the applicant was not prejudiced as all third party comments made were with regards to the correct set of plans. As such, this point is moot.
14. The applicant also asserts that the Council failed to communicate the second reason for refusal to them during the application process. The evidence before me appears to corroborate this. Again, this is an example whereby the Council, whilst communicating with the applicant, failed to work proactively with them.
15. Nonetheless, the decision notice sets out a reason for refusal and clearly references the effect on 12 Elmsway, thus the living conditions issue was known at the time the applicant submitted its statement of case.
16. Leading on from this, the applicant asserts that the Council changed its reasoning on the impact on 12 Elmsway during the appeal, namely that the effect on the windows was added. I agree that the officer report is vague with regards to the purported impact of the proposal on the living conditions of

neighbouring occupiers, namely as references were made to habitable room windows yet the concerns appear to largely centre on the effect to the garden space.

17. Whilst the Council should have been clearer within its report, the applicant dealt with the matter of the proposal's impact on the neighbouring windows within their Statement of Case and, at final comments stage they simply reiterated points which they previously raised. The references which the Council made to the windows within its statement of case did not therefore result in the applicant incurring further delay and costs to address this matter through the submission of revised evidence.
18. With regards to the Council's assessment of the proposal in other respects, a thorough assessment was made through reference to the development plan, national policy and other material considerations. These include references to other built form in the locality. It is not helpful to extract phrases out of sentences and paragraphs, as the applicant has done, rather it is important to look at the overall assessment which the Council made on a particular matter. On doing so, I consider that the Council fully substantiated its concerns, did not make vague or inaccurate assertions and did not fail to determine cases in a consistent manner.
19. I appreciate that the Council, within its submissions, failed to acknowledge the scheme which was subsequently approved at the appeal site. This is a clear oversight. Nevertheless, the applicant's comments serve to confirm that the approved scheme is different to the appeal proposal and indeed I have set out why I consider both schemes to be different within my appeal decision. I have also found that the appeal should not succeed due to the harm which would result to the character and appearance of the area. I am therefore satisfied that the Council did not prevent development which should clearly be permitted.
20. Overall, whilst there are instances in which the Council's behaviour was regrettable, there were clearly fundamental disagreements between the parties relating to the merits of the proposal and I am not convinced that better communication would have prevented the submission of this appeal or narrowed the issues to be determined.
21. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Ellison

INSPECTOR