



Costs Decision

Site visit made on 27 November 2023

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Costs application in relation to Appeal Ref: APP/Z5060/W/23/3323885 65 Mayswood Gardens, Dagenham RM10 8UU

- 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 Elez Sufa for a full award of costs against the London Borough of Barking and Dagenham Council.
 - The appeal was against the refusal of planning permission for demolition of double garage and the construction of a bungalow with associated refuse, recycling and cycle storage.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably for example, with respect to persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable; by not determining similar cases in a consistent manner; or by making vague or generalised assertions about a proposal's impact.
3. The applicant has referred to unnecessary delays, however, there is no substantive evidence before me to demonstrate this.
4. A previous appeal at the site for the demolition of the existing double garage and the construction of a 1 bedroom bungalow was dismissed in March 2022¹. The Inspector of the previous appeal considered that the proposed development would not cause harm to the character and appearance of the area and the living conditions of neighbouring occupants. However, he did consider that suitable living conditions for the future occupiers would not be provided.
5. Evidence has been provided to demonstrate that the current proposal is identical to the previous proposal in terms of its siting and footprint. When considering the impact of the proposal on the character and appearance of the area and the living conditions of neighbouring occupants, the Council's Delegated Report makes no reference to the previous appeal decision. No

¹ APP/Z5060/W/22/3292143

statement of case has been provided to expand upon their reasoning for the refusal, nor has there been any response to the applicant's costs claim.

6. The Council has therefore not provided any substantive evidence to justify why it refused the application again on grounds of character and appearance and the living conditions of neighbouring occupants. It will be seen from my decision, that having regard to the provisions of the development plan, the National Planning Policy Framework and other relevant considerations, the development proposed should not have been refused on these grounds, in my judgement. The Council made vague and generalised assertions about the impact of the proposal that it has not supported by substantiated objective analysis and persisted in objecting to the scheme on grounds which the Inspector previously indicated to be acceptable. This is unreasonable behaviour and has resulted in unnecessary expense for the applicant in contesting the Council's first and second reasons for refusal.
7. The Council's third reason for refusal related to the proposed quality of accommodation regarding failure to provide the required built-in storage, the single aspect nature of the bungalow and the outlook. The previous Inspector found that the level of built-in storage would be acceptable, and the built-in storage remains the same. Whilst I have taken a different view from the Council, refusing the application again on this matter is not sufficient to represent unreasonable behaviour. This is because the development plan sets the minimum built-in storage standards and the Council had regard to this.
8. Whilst I have taken a different view from the Council on the single-aspect issue, this issue was substantiated by the Council in the Delegated Report which has regard to the previous appeal decision and the revised design. As such, the Council has not behaved unreasonably on this particular matter.
9. It will be seen from my appeal decision that there are sufficient grounds for refusing planning permission due to the outlook provision conflicting with the development plan policy set out in the Council's decision notice. Whilst the previous Inspector did not specifically mention outlook in their decision, one of the reasons for the refusal of the previous application did relate to outlook. The Council's Delegated Report considers the design amendments and outlines how this would not resolve the outlook issue. As such, the Council provided adequate analysis to substantiate its findings with regard to outlook and has therefore not behaved unreasonably in this particular regard.
10. In conclusion, the Council did not prevent development that should clearly be permitted. However, the Council did behave unreasonably, and the applicant has incurred unnecessary expense in contesting the first and second reasons for refusal.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the London Borough of Barking and Dagenham Council shall pay to Mr Elez Sufa the costs of the appeal proceedings, more particularly described in the heading of this decision, limited to those incurred in contesting the first and second reason for refusal.

12. The applicant is now invited to submit to the Council of the London Borough of Barking and Dagenham, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

L Reid

INSPECTOR