



Costs Decision

Site visit made on 16 January 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 21st February 2024

Costs application in relation to Appeal Ref: APP/U5930/W/23/3321777 110 Nelson Road, Chingford, Waltham Forest E4 9AS

- The appeal 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 appeal is made by Mrs Masarat Mahmood for a full award of costs against the decision of the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of the Council to grant planning permission under section 73 for sub-division of single dwelling house to create 2x3 bedroom houses including the construction of part single, part two-storey rear extension and conversion of garage into habitable room, and replacement of garage door with bay window and access door, without complying with conditions 2, 3, 5 and 7 attached to planning permission Ref 182248, dated 13 March 2019.
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Decision

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

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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. I allowed the appeal and granted planning permission for the proposed development without complying with conditions 3, 5 and 7 and a revision to condition 2. The applicant asserts that the Council has acted unreasonably because its refusal reason, as well as the supporting analysis in the officer report was vague, generalised, and inaccurate. Furthermore, they consider that the concerns around 'retaining it in perpetuity' within the three conditions, has not been fully addressed, nor has there been an understanding that the conditions are no longer necessary and could be removed. Reference was also made to paragraph 54 of the National Planning Policy Framework (the Framework) whereby the Council did not give a clear justification for restricting national permitted development rights.
4. The Council has failed to explain why conditions 3 and 5 need to be retained, and why it is necessary for both these conditions and condition 2 to include 'retaining it in perpetuity'. No consideration has been given to amending condition 2.
5. The discussion by the Council on the removal of permitted development rights is largely generic, rather than tailored to the appeal site, as are other

comments relating to the size of the proposed garden for No 110A and the effect that these rights would have on neighbouring occupiers. Their reports and explanations are therefore vague and unsupported by objective analysis.

6. The Council have therefore acted unreasonably by refusing an application which clearly should have been permitted. If a full analysis and understanding of the planning case had been undertaken, it is logical to conclude that the appeal would have been avoided. I am therefore satisfied that the applicant has had to incur the expenses of employing a professional to provide advice and then pursue the appeal.

Conclusion

7. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Council of the London Borough of Waltham Forest shall pay Mrs Masarat Mahmood, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the submission of this appeal; such costs to be assessed in the Senior Courts Cost Office if not agreed.
9. The applicant is now invited to submit to the Council of the London Borough of Waltham Forest, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M J Francis

INSPECTOR