



Costs Decisions

Site visit made on 24 January 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22ND MARCH 2024

Costs application in relation to APP/N5660/C/22/3306011 (Appeal A), APP/N5660/C/22/3306012 (Appeal B) and APP/N5660/W/22/3303643 (Appeal C) 19, Rectory Grove, London SW4 0DX

- 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).
 - **Application A** is made in relation to Appeal C by Mr Tim Morley for a full award of costs against the Council of the London Borough of Lambeth.
 - **Application B** is made in relation to Appeal A by Mr Tim Morley and Appeal B by Ms Glenys Martin for a full award of costs against the Council of the London Borough of Lambeth.
 - Appeals A and B were against an enforcement notice alleging without planning permission, and at the rear of the premises, the installation of a black painted, steel landing and staircase ('the unauthorised black metal landing and staircase').
 - Appeal C was against the refusal of planning permission for the erection of a replacement garden access to the first floor of the property comprising a steel landing and staircase.
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Decisions

Application A

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

Application B

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

Reasons

3. 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.

Application A

4. The applicants seek a full award of costs in respect of the appeal against the refusal of planning permission. The applicants claim the application was not determined in the first 8 weeks and was not considered by the Council for 11 weeks.
5. I do not have any substantive evidence to demonstrate that the Council did not consider the application for the first 11 weeks. Also, although the application was not decided within the initial 8 week period, there is a process by which the applicant could have appealed against the non-determination of the application. The Council agreed an extension of time with the applicant and determined it within that extended period, which is not unreasonable behaviour.

6. The applicant has also raised concern over neighbours at Charles Barry Close not being consulted and the Council not having regard to existing development at neighbouring properties at Rectory Grove and Charles Barry Close. The applicant has also suggested that the Council focussed on the objections and did not have due regard to the letters of support. It is claimed the Council misapplied policy by referring to 'buildings' to gardens and neglected to consider the issue of the windows of residential buildings being affected by privacy.
7. The Council confirm all adjoining neighbours to the site were informed. Having regard to the number of representations received I am of the view that appropriate consultation was carried out for the application. I have not been directed to the policy or where the planning officer has misapplied this policy. In this respect, it is difficult for me to decide if it has been misapplied. Despite the applicant's being concerned that the Council focussed on objections, the letters of support were highlighted alongside the objections in the Officer Delegated Report.
8. The Council did not carry out a site visit but suggest that the photographs supplied by the applicant, objectors, and the enforcement team, together with Google imagery were sufficient to assess the impact of the development. There is no legal requirement for a Council to carry out a site visit, but it is reasonable for the applicant to expect a visit to be carried out to make the most informed decision. However, in this instance, and based on the photographs supplied together with the street view images, as well as my own site visit, I am of the view that there was sufficient information for the Council to make an informed decision on the impacts of the development despite not visiting.
9. Notwithstanding my findings on the accompanying decision, the planning matters are subjective, and the Council are not being unreasonable by coming to a different conclusion on the acceptability of the development. The Council were not being unreasonable if they had genuine concerns over the impact on the character and appearance of the area as well as noise and privacy impacts on neighbours, which they did not think could be overcome by conditions.
10. Based on the PPG advice and guidance, the application for costs is made with respect to a substantive award of costs, which is based on a flawed assessment made in the planning application that resulted in vague, generalised or inaccurate assertions about the impact of the development, which is not supported by objective analysis. However, the reasons set out by the Council were relevant to the development plan, and I consider their concerns to be specific concerns, which were supported by sufficient objective analysis.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Application A.

Application B

12. The applicant has outlined that the decision of the Council to take enforcement action, despite the submission of an appeal against the planning refusal was unreasonable. It is claimed that the Council's decision to take enforcement action was not proportionate or expedient, contravening its own enforcement protocol, which impacted upon the determination of the applicant's planning appeal and his human rights under Article 8 and 14 of the Human Rights Act 1998.

13. I understand that the applicant feels frustrated with the Council's decision to take action before the planning appeal was determined. However, the conduct of the Council in respect of its own enforcement protocol is not something that I can deal with as part of the appeal process and is a matter that should be addressed directly with the Council.
14. Notwithstanding this, if the Council had neglected to act, then a further appeal against the enforcement notice could have been made following a dismissal, prolonging the appeal process and the impacts on the neighbours they considered to be affected. For this reason, I am of the view that it was not unreasonable for the Council to serve the Notice to deal with these matters concurrently.
15. Furthermore, ensuring a neighbour's living conditions are protected from privacy and outlook impacts is a well-established planning policy aim that would have outweighed the harm to the applicant's human rights. The Council's decision to take action would not, therefore, have unacceptably violated the rights of the applicant, as the protection of the public interest could not have been achieved by means that are any less interfering of their human rights.
16. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Application B.

M. P. Howell

INSPECTOR