Costs Decisions

Site visit made on 8 January 2024 by M Long BA(Hons) MSc MRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

Costs application in relation to Appeal A Ref: APP/H5390/D/23/3324142
88 Becklow Road, Hammersmith and Fulham, London W12 9HJ

- 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 Deborah and Andy Down for a full award of costs against the London Borough of Hammersmith and Fulham.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a single-storey side extension with glazed lean-to roof to replace existing glazed single-storey side extension.

Costs application in relation to Appeal B Ref: APP/H5390/D/23/3324115
88 Becklow Road, Hammersmith and Fulham, London W12 9HJ

- 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 Deborah and Andy Down for a full award of costs against the London Borough of Hammersmith and Fulham.
- The appeals were against the refusal of planning permission for the demolition of existing single-storey rear infill extension and construction of new single-storey rear infill extension and installation of new glazed screen.

Decisions

Appeal A

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

Appeal B

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

Procedure

3. The site visit for the associated appeals was undertaken by a representative of the Inspector whose recommendations are set out below and to which the Inspector has had regard before deciding these applications.

Preliminary Matters

4. An application for costs has been made in respect of both appeals described in the banner headings. Appeal A seeks consent under Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Appeal B seeks planning permission for the same development. To avoid, duplication, I have dealt with both applications for costs in a single report.

Reasons

5. 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.

Appeal A

6. Paragraph A.3(a) of Schedule 2, Part 1, Class A of the GPDO sets out that development is permitted by Class A subject to the condition that the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of similar appearance to those used in the exterior of the existing dwellinghouse. The Technical Guidance[1] sets out that materials used should be of a similar visual appearance to those used in the existing house, but they do not need to be the same.

7. Paragraph A.4(3) sets out that the local planning authority may refuse an application where, in the opinion of the authority, (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, the conditions, limitations or restrictions applicable to development permitted by Class A which exceeds the limits in Paragraph A.1(f) but is allowed by Paragraph A.1(g).

8. The applicant considers that, although not identical, the proposed aluminium framed openings would have a similar appearance to the white uPVC windows on the existing dwelling. While, in principle, aluminium framed windows could have a similar appearance to white uPVC windows, no further design details such as the proposed colour, frame size or profile were submitted by the applicant. Therefore, it was not unreasonable for the Council to determine that it had insufficient information to determine compliance with Paragraph A.3(a). Refusal on those grounds was then allowed for by Paragraph A.4(3). Therefore, the Council did not act unreasonably in refusing the application on these grounds, nor did they prevent or delay development which should clearly be permitted.

9. The condition to require matching external materials forms part of the Class A requirements, which must be complied with in order for the proposal to be permitted development. From the submitted evidence, the Council did not consider there to be compliance with this condition. Paragraph A.4(12) makes it clear that in relation to Class A, additional conditions can only be imposed where the local planning authority is granting prior approval, and only where those conditions are reasonably related to the impact of the proposed development on the amenity of any adjoining premises. It would not have been possible for the Council to grant prior approval for the appeal scheme with a condition in relation to materials, because amenity did not stand to be considered in this case, such a condition would be outside the scope of A.4(12) and it would duplicate the requirements of the Order.

10. The 'Notice of Withholding Prior Approval' does not state why the materials are not considered to be adequately similar. Nevertheless, the Council's officer report clarifies that concerns relate to the proposed aluminium and the existing

[1] Ministry of Housing Communities & Local Government Permitted development rights for householders, Technical Guidance (September 2019).

uPVC window frames. In the Appeal Statement, there is mention of email correspondence between the main parties following the determination on the application in which the Council provided additional clarification. While a more detailed explanation from the Council could have been helpful, the applicant was able to obtain clarification. It therefore has not been demonstrated how a lack of clarity on the reason for refusal has resulted in unnecessary or wasted expense at the appeal stage.

11. The applicant has made clear that the French doors do not form part of the proposal. While the Council has raised concerns with the doors in their consideration of the application, these concerns did not form the sole basis of the refusal and so did not prevent or delay development which should have clearly been permitted.

12. Therefore, in respect of Appeal A, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Appeal B

13. From the application forms, I note that the prior notification (Appeal A) was submitted 26 April 2023, which is after the decision notice for the planning permission scheme (Appeal B) was issued on 23 March 2023. There is no substantive evidence before me that the applicant put forward a permitted development fallback option as part of the original application.

14. As the permitted development scheme was not before the Council when determining the earlier planning application, it was not unreasonable that the Council did not consider this possible fallback option. It is not incumbent on the Council to consider all likely or possible schemes that may provide a fallback position for each application that it deals with.

15. Although the current neighbours did not object to the proposed schemes, with regard to Appeal B, the Council still had a responsibility to consider the living conditions of the current and any future occupiers of the neighbouring property. It found harm on the grounds of outlook and light, with the reasons clearly substantiated in the officer report with reference to guidance and development plan policies. I do not therefore consider that the Council behaved unreasonably in its assessment of the proposal.

16. Although I reached a different overall conclusion on Appeal B, I also found there would be harm with regards to outlook. However, I then had different information before me, specifically the permitted development fallback scheme, which resulted in a different planning balance to that which was before the Council.

17. It is unclear whether the applicant sought pre-application advice before submitting this application or the application now subject of Appeal A. Consequently, it has not been demonstrated that the Council acted unreasonably in this respect.

18. Therefore, in respect of Appeal B, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Conclusions and Recommendations

19. Given the above, I do not consider that the Council has acted unreasonably and thereby caused the applicant to incur unnecessary or wasted expense in the appeal process for either Appeal A or Appeal B. The claim for costs in respect of both appeals are therefore not justified and accordingly it is hereby recommended that each application for costs be refused.

M Long

APPEAL PLANNING OFFICER

Inspector's Decisions

20. I have considered all the submitted evidence and my representative's report and I agree with the reasoning and recommendations.

21. In respect of Appeal A, development is permitted by the GPDO through the operation of Article 3(1) where the proposal meets all of the criteria, conditions and limitations of the relevant class of permitted development. The courts have held that the local authority is bound to consider and determine whether the development falls within the scope of the particular class of permitted development.

22. The provisions of Paragraph A.4(3) allow for refusal where there is insufficient information to establish compliance with the applicable conditions, limitations and restrictions. Accordingly, it was not unreasonable for the Council to consider whether, on the basis of the information before it, the proposal complied with Class A. Nor was it unreasonable that the Council did not simply assume that the applicant would comply with the relevant condition, without sufficient information to demonstrate compliance. This was not therefore a case where development should clearly have been permitted.

23. In respect of Appeal B, the fallback position does not appear to have been before the Council at the time it decided the original application. Furthermore, as the applicant pursued the householder appeals procedure for this appeal, the Council did not have the opportunity to submit a statement at appeal stage to consider this additional information further. The fact that the prior notification for the same scheme was before me at appeal stage was the material consideration which allowed me to take a balanced judgement and reach a different conclusion to the Council on this appeal. There was therefore no unreasonable behaviour leading to wasted expense in relation to this appeal.

24. Therefore, in respect of both Appeals A and B, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted. On that basis, the applications for an award of costs in relations to both Appeals A and B are refused.

L McKay

INSPECTOR