



Costs Decision

Site visit made on 23rd May 2024

by Megan Thomas K.C. Barrister-at-Law

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs Decision in relation to Appeal Ref: APP/L3625/D/24/3340268

41 Sandlands Road, Walton on the Hill, Surrey KT20 7XB

- 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 Dipeshkumar Patel for an award of costs against the Reigate and Banstead Borough Council.
 - The appeal relates to the refusal of planning permission for ground floor rear and side infill extension.
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Decision

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

Reasons

2. 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 PPG details examples of unreasonable behaviour by a local planning authority but these are not exhaustive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award. In this case the appellant is seeking a full or partial award of costs on the basis that the alleged unreasonable behaviour by the Council has been both procedural and substantive in nature.
4. In relation to substantive matters, it is said that the Council's reason for refusal was not substantiated and contained vague, generalised or inaccurate assertions about the proposal's impact. It is also said that the Council prevented or delayed development that should clearly have been permitted. The reason for refusal was specific relating to loss of outlook from the dining room at no.43 Sandlands Road and loss of light to the same dining room. Whilst I have not found there to be an unacceptable loss of light to that room, it is matter of planning judgment on which town and country planning experts may reasonably disagree. The Planning Officer in the Report recognises that in respect of light, the 45-degree test is set out in Supplementary Planning Guidance and when applied to the dining room window it is already breached and that the extension would worsen this relationship. It is reasonable to make a planning judgment that the proposed development given its dimensions and particularly its depth, would worsen the light reaching the dining room. I do not consider that it is a sufficiently vague, inaccurate or generalised assertion nor one done without objective analysis.

5. In terms of whether the Council has unreasonably pursued the reason for refusal on the grounds of harm to living conditions of the occupants of no.43 and thereby delayed or prevented development that should clearly have been permitted, the planning judgments made were within the spectrum of reasonable responses that could have been made to the proposed development and in coming to their views they have borne in mind the permitted development rights to build an extension which had the benefit of a prior approval. I do not agree that if the planning officer had applied the same assessment to the refused application as they had to earlier schemes that the outcome would have been the same. I do not conclude, therefore, that the Council has prevented or delayed development that should clearly have been permitted.
6. It was not unreasonable for the Council to cite Policy DES1 as being breached without specifying which element of the policy was breached as it is clear which part of it relates to residential amenity issues. Policy CS4 was cited in the reason for refusal but is not relied on by the Council in the appeal. Whilst it is conceded to be an error, its inclusion is not of such import as to amount to unreasonable conduct in this particular case. The Appellant recognised it should not have been cited and succinctly set out why in the Appeal Statement. The Appellant's costs have not been unduly inflated by dealing with that issue. In respect of the Council's reliance on Supplementary Planning Guidance this is not unreasonable conduct. The Appellant has made representations about it as is standard practice in appeals.
7. The Appellant alleges that there has been procedural unreasonable conduct in the Council failing to work positively and proactively with him to seek an approval. The appropriate time for the Appellant to have sought to discuss the proposal with the Council was at pre-application stage, as outlined in the NPPF and PPG. The Council offer this service and so I am satisfied that the Appellant did have adequate opportunity to discuss the current scheme with the Council at the pre-application stage. There is no legal duty on a local planning authority to enter into discussions with an applicant to resolve problems in a 'live' application before it has been determined.
8. If local planning authorities were required to work proactively with application during a 'live' application to address all matters in dispute this would then negate the need for any pre-application discussions to take place at all and enable the applicant to avoid paying the appropriate fee where a charging regime is in place. In any event, the Council were of the view that the dimensions and siting of the proposal would cause unacceptable harm to the neighbours at no.43 Sandlands Road (what they termed the point of principle) and that they had signalled the nature of the extension that would overcome this – namely the prior approval scheme (ref:23/01929/PDE). The principle of a side extension had been established in this latter scheme. The Council was not under an obligation to accept amendments during the 'live' scheme. In this case it gave weight to the material considerations as it judged fit including the extant prior approval consent. This was referenced in the Report.
9. The Appellant makes reference to amendments being sought in relation to previous similar applications within the immediate area and considers that there has not been an equitable or fair procedure applied. However, first, it is not clear that any amendment would have led to a consent being granted (that was not already granted) and consequently the appeal and its costs being avoided.

Second, each application must be determined on its own individual merits, and I am not persuaded that the procedure applied with other applications has necessarily to be applied to this particular application with this particular siting, planning history and in this particular location.

10. In respect of an alleged failure to provide information, the Council indicates that the Appellant made a Freedom of Information request for specified information. The Appellant has not refuted this. In response to the request, the Council state that it provided all the information it held on file as requested. Of the information requested/specified there was no further information to provide. In the circumstances this is not unreasonable conduct, and in any event if it was, it has not caused the appeal to be held and costs to be incurred.

11. In view of the above, I am satisfied that the Council did not behave unreasonably in not communicating more positively or fully with the Appellant or in any of the other ways specified by the Appellant. Even if they had, I conclude this would not have led to the grant of a planning permission and the appeal would most likely have been lodged rather than avoided. I do not consider that the costs of this appeal (wholly or in part) have been incurred unnecessarily as a result of the Council's pre-appeal or post-appeal behaviour. The application for costs on this procedural ground therefore fails.

Conclusion

12. I conclude that unreasonable behaviour, whether from substantive or procedural conduct, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. No award of costs is justified.

Megan Thomas K.C.

INSPECTOR