



Costs Decision

Site visit made on 8 October 2024 by R Dickson BSc (Hons) MSc MRTPI

Decision by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 27th November 2024

Costs application in relation to Appeal Ref: APP/U5360/D/24/3343840 57A Mount Pleasant Lane, Hackney, London E5 9DW

- 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 A Friesel for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of an additional storey above an existing three-storey dwellinghouse (to a maximum height of 12.2 metres of four storeys).
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Decision

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

Appeal Procedure

2. A representative of the Inspector has set out the recommendation below to which the Inspector has had regard before deciding the appeal.

Reasons

3. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only 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. Costs may be awarded to any party regardless of the outcome of the appeal.
4. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. In this case, it is whether the development accorded with the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order).
5. The application for costs centres on the appellant's concern that the Council did not determine the case in a consistent manner with a previous approval under Class AA of Part 1 Schedule 2 of the Order.
6. The Order was amended in August 2020 to include Class AA, which allows for the construction of up to two additional storeys. The Council approved a scheme for one additional storey in January 2021, and subsequently refused

the most recent application for the same scheme, after the original permission had lapsed.

7. It is clear from the officer's report that since January 2021, several other appeals had been decided, which resulted in High Court judgements. These established the ability to take the National Planning Policy Framework (the Framework) into account. In particular, the Framework can be taken into account when assessing condition AA.2.3(a)(ii) of the Order in relation to the external appearance of the dwellinghouse. The officer's report is clear in that these are material planning considerations which have changed since the original approval in January 2021. This change in material considerations have led the Council to make a different decision, as the wider context of the site could be taken into account, and is not unreasonable behaviour.
8. Consequently, the matter was one of a fundamental disagreement between the parties which could have only been resolved by way of an appeal. As such unreasonable behaviour, as described in the PPG, has not been demonstrated. In this case, the Council has determined cases in a consistent manner where material considerations have arisen. Therefore, an award of costs is not justified.
9. For this reason and taking into account all other matters raised, I recommend that the application for an award of costs is refused.

R Dickson

Appeal Planning Officer

Inspector's Decision

10. I have considered all the submitted evidence and my representative's report and concur that the application for an award of costs should be refused.

Mr A Spencer-Peet

INSPECTOR