



Costs Decision

Site visit made on 15 October 2012

by Peter J Golder Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 November 2012

Costs application in relation to Appeal Ref: APP/X5210/A/12/2173868 52 Ainger Road, London NW3 3AH

- 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 Ulrich Gerza for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of planning permission for change of use to form single dwelling house, infill of side return, first floor level rear extension and mansard roof extension.
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Decision

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

Reasons

2. Circular 03/2001 advises that, irrespective of the outcome of an appeal, costs can only be awarded against a party who has behaved unreasonably thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process
3. The application claims that the Council had no realistic prospect of supporting its reasons for refusal and has unreasonably prevented development which should have been permitted. I take the two reasons for refusal separately.
4. Local planning authorities are not bound to accept the recommendations of their officers providing they can show reasonable grounds for not doing so. As Circular 03/2001 notes, appeals turning on the assessment of issues such as the living conditions of adjoining occupiers often involve matters of judgement.
5. The officer's report to the Development Control Committee presented a full and balanced assessment of the proposal. Equally the deputation made to the Committee by the occupiers of No 51 was comprehensive in setting out of the concerns about impact upon their amenity. Whilst it seems that there was some scope for misunderstanding in the weight of information presented I find little to conclusively suggest that the Committee members were not fully apprised of the nature of the scheme before them when they made their decision. In particular I do not consider that the misquoting of the dimensions cited would have materially got in the way of a correct understanding of the components of the lower ground floor extension and its relationship with No 51.

6. The Council's statement of case considers the question of whether conditions might be used to overcome their concerns but conclude otherwise. They have also provided an explanation of the differences as they see them between the appeal scheme and the roof light permitted at 6 Ainger Road. Neither action suggests that the Council has failed to have regard to the guidance at paragraph B25 of the Circular or have behaved in an unreasonably inconsistent manner.
7. Against this background I regard reason for refusal No 1 carefully framed and supported by evidence which amounts to a respectable stance in respect of the Council's concerns about the effects of the proposal upon the occupiers of No 51. Consequently I do not consider that they have acted unreasonably in respect of reason for refusal No 1 and conclude that an award of costs is not justified in dealing with this aspect of the Council's decision as taken through the appeal process.
8. I turn now to reason for refusal No 2. Whether the minutes are an accurate reflection of the discussion at the Development Control Committee is not a matter on which I am able to confidently conclude. However what seems clear is that they reflect a concern about the cumulative effects of existing and proposed additions. The minutes record that taken together the extensions would not be subservient to the host building. I regard this as a concern directed at the effects on the appearance of the building; the nub, perhaps put more explicitly there, of the second reason or refusal. There is no material contradiction here and I consider the reason for refusal satisfies the tests at paragraph B16 of the Circular.
9. However the subsequent January 2012 permission for all but the lower ground floor extension represents a significant change of material circumstances since the appeal scheme was refused permission. Reason for refusal No 2 is predicated upon the cumulative impact of all of the extensions as a whole. The Council fails to address why the omission of the lower ground floor element renders the other aspects acceptable or what particular characteristics of this extension tip the balance against the scheme and cause harm to the character and appearance of the building.
10. In short the Council has not addressed these changed circumstances with any relevant evidence to support reason for refusal 2 which reflects events since the original refusal of planning permission. Rather they seek to rely upon essentially unsubstantiated assertions that their concerns still apply; without those concerns being explained and supported by any proper analysis. The appeal was lodged in April 2012; sometime after the second scheme was approved, providing the opportunity for an objective analysis of the implications of that approval upon the issues at this appeal. There is no evidence that this took place. For this reason I find their behaviour in not properly addressing reason for refusal No 2 unreasonable and the appellant has incurred the unnecessary and wasted expenditure of having to address these aspects of the Council's decision through the appeal process. In these circumstances an award of costs is justified limited to, to those costs incurred in dealing with reason for refusal No 2.

Costs Order

11. 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 Camden shall pay to Mr Ulrich Gerza, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with reason for refusal No 2.

12. The applicant is now invited to submit to the Council of the London Borough of Camden, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Peter J Golder

INSPECTOR