Costs Decisions

Inquiry held on 7, 8 and 9 January 2014

Site visit made on 9 January 2014

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 3 March 2014

Costs application in relation to Appeal A: APP/X5210/A/12/2188543
45 Lancaster Grove, London NW3 4HB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr L Silver for a full award of costs against the Council of the London Borough of Camden.
- The Inquiry was in connection with an appeal against the refusal of planning permission for the retention of a 2 storey rear extension at rear basement and ground floor including lightwell and excavation to form rear basement.

Costs application in relation to Appeal B: APP/X5210/C/12/2183692
45 Lancaster Grove, London NW3 4HB

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Louis Silver for a full award of costs against the Council of the London Borough of Camden.
- The Inquiry was in connection with an appeal against an enforcement notice alleging the excavation of basement extension to rear and erection of rear ground floor level extension above all in connection with the existing flat.

Decisions

1. These applications for an award of costs are dismissed.

Introduction

2. Before the Inquiry both of the Applicant's applications, the Council's response to the application relating to Appeal A and the Applicant's reply to that response had all been submitted in writing. After the Inquiry I received the Council's written response to the costs application for Appeal B and the Applicant's subsequent reply. Although nominally separate applications, the individual submissions tended to cover both and I have therefore considered the applications together.

The Inspector's Reasoning

3. Circular 03/2009, *Costs Awards in Appeals and Other Planning Proceedings,* (the Circular) advises that irrespective of the outcome of an 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.

4. The Applicant's case in these applications revolved around planning permission 2007/4905/P (the 2008 scheme) and the fact that on the floor plans associated with that permission the title block wrongly stated they had been drawn at a scale of 1:50 when in fact they were at a scale of 1:100 (what I will call the scaling error). The Council acknowledged that this meant it made an incorrect comparison between the footprints of the 2008 scheme, what is now on site and what was proposed under Appeal A. It also accepted that misunderstanding played an important part when resolving to refuse the application subject of Appeal A and serve the notice subject of Appeal B, but it is now aware of this error. The Applicant was therefore of the view that the reasons on the decision notice and the enforcement notice were, and still are, defective. On realizing its mistake the Applicant said the proper action for the Council to take (in relation to Appeal B at least) would have been to withdraw the enforcement notice and, if expedient after a case review, to issue a new one with the correct information.

5. In September 2012 the Council accepted the mistake it had made with regard to the scaling error but confirmed it would still defend its decision. This was 2 weeks after Appeal B had been lodged but as that appeal was under ground (f) only, the relative merits of the works, which would normally form a ground (a) appeal, were not for consideration. This acceptance by the Council also came 2 months before Appeal A had been submitted and so all the submissions concerning that appeal have therefore been made in the knowledge that this was its position.

6. It was not questioned that the Council properly understood the actual details and dimensions of the schemes subject of Appeals A and B, and it is clear that those schemes are materially different to the 2008 scheme. Therefore, although comparisons of the footprints of the Appeal A and Appeal B extensions with the 2008 scheme are not now part of the Council's case, to my mind this has not had an appreciable effect on the nature or substance of the appeals before me. Just because the issues resulting from the scaling error fell away, there is no basis to assume other reasonable concerns for the Council relating to similar matters could not have remained. I have no grounds to find the views put forward by the Council's witnesses to the Inquiry were not genuinely held, and in the Officer report the adverse effects of the loss of the bay, the height of the extension, the extent of render and so on are raised. Moreover, Mr Lane's reservations about the merits of what has been built show it is not unreasonable to have a concern about the developments before me.

7. In the case it has now presented the Council has not raised a new reason for refusal or a new reason for issue, but has remained within the wording of the 2 notices. Moreover, the Council must now be offering slightly different arguments to those that formed the basis of its decisions, so it would seem it has reviewed its case and responded promptly to the change that arose from a realization of the scaling error. Even when it had regard to the correct dimensions of the 2008 scheme it is clear the Council still had concerns about the extensions subject of these 2 appeals. Therefore, I see no benefit in the notice before me being withdrawn, as it is reasonable to assume that in such circumstances another would have been served with virtually the same wording, and so an appeal would still have ensued.

8. While it was said that the Council conflated concerns about height, size and design in its decisions and did not apportion weight to any of the individual

parts, to my mind in relation to each of these points there is a difference between the 2008 scheme and the schemes subject of these 2 appeals. Furthermore, even if these are to be taken together it is still reasonable to examine any or all of these matters separately to assess their weight, and in evidence I heard concerns about each element.

9. The one aspect of its case the Council did withdraw was the concern about the effect on daylight, and so it provided no evidence to support this point. However, that concern was raised by the Rule 6 party and consequently the Applicant would have needed to address it in any event. Therefore the Council's actions did not put him to unnecessary expense.

10. I also note the scaling error relates to all or part of just 2 of the 4 reasons for refusing the application subject of Appeal A, and 2 of the 3 reasons for issuing the notice subject of Appeal B. The further issues of the height, the over-looking and the lack of a Basement Impact Assessment which also appeared on one or both of the notices were unrelated to that error. It is therefore reasonable to assume that those would have remained even if the Council had no longer wished to pursue the concerns that flowed from the scaling error. As a result, it follows that a refusal of permission, the serving of an enforcement notice, and the resultant appeals would still have occurred in that instance.

11. Finally, while the Applicant criticised the Council for not having undertaken the necessary limited level of observation to pick up the scaling error, such a criticism can equally be levelled at the professionals involved in the submission of the 2008 scheme for providing such plans. In any event, in the light of the above I am not satisfied that even if such observations had been undertaken they would have avoided an appeal.

12. In assessing this matter I note the Applicant offered to revert to the 2008 scheme in March 2012. Putting aside my comments about whether the 2008 scheme could be implemented, it was always open to the Applicant to make such a reversion if that permission was still extant, and so that has had little bearing on my assessment of these applications. It is not unreasonable for the Council to have reservations that changing the extension on site to the 2008 scheme would constitute a lesser step than total demolition, especially as Mr Bolt said it would involve only 5-10% less work. It was also alleged that the enforcement notice just transferred defective information from the planning application. However, in the interests of consistency it is reasonable for the Council to reach a decision about the planning application and the serving of an enforcement notice at the same time. To my mind paragraph B12 of the Circular does not require a re-assessment of cases in such an instance.

13. Consequently, having regard to the concerns raised by the Applicant I conclude that the Council has acted unreasonably by raising a concern about daylight that it subsequently withdrew without evidence, but that has not put the Applicant to additional expense. In relation to all other matters it has provided a respectable basis for its stance. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Circular, has not been demonstrated and so the applications are dismissed.

J P Sargent

INSPECTOR