
Costs Decision

Site visit made on 16 September 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Costs application in relation to Appeal Ref: APP/X5210/D/20/3256159 6 Rosecroft Avenue, London NW3 7QB

- 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 Justin Randall 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 development described as hard landscaping, removal of gate and associated alterations.
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Decision

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

Reasons

2. 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 expense in the appeal process. Patently this is a two stage test. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. The crux of the applicant's claim for costs appears to stem from it being, in the applicant's view, unreasonable for the Council to have refused planning permission. They have then incurred unnecessary expense in having to submit an appeal.
4. The Council refused planning permission for three reasons. These were that the changes to the front garden, which included additional hardstanding and revisions to the front boundary wall, harmed the Redlington and Frognal Conservation Area (RFCA); the loss of permeable space went against policy aims to decrease the risk of flooding and effects of climate change; and the provision of additional off street parking did not encourage the use of sustainable transport options. Despite me having taken a different view to the Council in regard to their reasons for refusal and accordingly allowed the appeal, I do not consider they have been unreasonable in having refused planning permission. They have been clear on where they feel the harm would

be caused, articulating their objections in enough detail. This is obviously subjective and a matter of planning judgement on their part. In the case of each reason, they have been sufficiently detailed and referred to relevant policies of the development plan. The fact that the applicant disagrees with that position is arguably par for the course in an appeal situation. The decision to proceed with which was obviously the applicant's right to make and all that such entails.

5. The applicant makes reference to the second and third reasons for refusal, stating that they should not have been included but fails to elaborate as to why. I therefore refer to my earlier comments. Reference is made to an appended email from the Council's planning enforcement function, but this was not included in the application for costs. I cannot therefore comment further on this matter. The applicant explains that the appeal should only have been against the first reason for refusal which seems a tacit acceptance of the fact that there would likely have been an appeal in any case for which costs would have been incurred. Whilst the first reason for refusal does refer to the landscaping, there is also mention of the changes to the boundary treatment and how these things as a whole would be harmful to the RFCA. Again, this is a subjective judgement.

Conclusion

6. For the reasons I have explained, I do not consider that the Council have acted unreasonably in refusing planning permission. The need for an appeal could not therefore reasonably have been avoided. The applicant has not, having considered their claim for an award of costs, incurred unnecessary expense in doing so. A claim for costs is not therefore justified and is accordingly refused.

John Morrison

INSPECTOR