The Planning Inspectorate

Costs Decision

Site visit made on 13 October 2020

by Mr C J Tivey BSc (Hons) BPl MRTPI

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

Decision date: 02 November 2020

Costs application in relation to Appeal Ref: APP/X5210/W/20/3247384
5 The Hexagon, Fitzroy Park, London N6 6HR.

- 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 Miss Rachel Munro-Peebles for a full award of costs against the London Borough of Camden Council.
- The appeal was for the extension of existing house and internal reconfiguration to create open plan ground floor and 4 bedrooms to the first floor. The proposal includes the demolition of an existing garage as well as the erection of 2no single storey extensions to the side and front of the existing property and a two storey extension at the rear.

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. The PPG states that awards against a local planning authority may be either procedural or substantive. Where concerning local planning authorities, the aim of the cost regime is to encourage them to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay. The PPG goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications.

3. The applicant considers that the appeal could have been avoided had the Council agreed to secure the Construction Management Plan (CMP) by way of a planning condition, as opposed to requiring a planning obligation to be secured. However as I found in my appeal decision I considered that it was not appropriate to impose a planning condition in the specific circumstances of the case, and that a planning obligation to secure not only the CMP, but also the associated implementation support contribution complied with the tests set out within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL regs). Consequently I consider that the Council were not unreasonable requiring that the applicant enter into a planning obligation which I found complied with the development plan.

4. In respect to the applicant's claim that the Council prevented or delayed development, it is quite clear that they themselves agreed to enter into a section 106 agreement in the first instance. It was only after their mortgage lender advised that they would not agree to be a signatory to it that the planning application proceedings became protracted.

5. I note that the applicant states that they have already prepared an outline CMP and consulted with the Fitzroy Park Residents Association (FPRA), although they appear to beg to differ. Further, whilst the applicant states that they demonstrated that they were willing to submit a full CMP using the Council's template, it is quite clear from their submissions that they did not agree with all of the criteria as set out therein. I accept that there is no absolute policy requirement within the adopted development plan that CMPs must be secured via a legal agreement, however each case should be assessed on its own merits.

6. In regard to the case in hand, the site is accessed via a series of narrow private roads and drives, in an area where other development is taking place. This is in addition to general traffic associated with the residential occupation of the estate, along with other users, including pedestrians and cyclists. A planning obligation was necessary as a planning condition cannot control land which is outside the ownership and control of the applicant nor secure financial contributions for, in this case, monitoring purposes.

7. Consequently I consider that the Council did not behave unreasonably with respect to the substance of the matter under appeal and whilst the use of a CMP for domestic scale extensions may not be commonly used across England, they are certainly more prolific within London and other city areas.

8. In summary I consider that the Council did not prevent or delay development which should have clearly been permitted, having regard to the Development Plan and other material considerations; or require that the applicant enter into a planning obligation which did not accord with the law or relevant policy within the National Planning Policy Framework.

9. Therefore I find that unreasonable behaviour of the Council, resulting in unnecessary wasted expense, as described in the PPG, has not been demonstrated. The application for a full award of costs is therefore refused.

C J Tivey

INSPECTOR