Costs Decisions

Site visit made on 24 April 2018

by Simon Warder  MA BSC(Hons) DipUD(Dist) MRTPI
an Inspector appointed by the Secretary of State

Decision date: 14 May 2018

Costs application 1 in relation to Appeal Ref: APP/Z5060/D/17/3191891
58 Salisbury Avenue, Barking, Essex IG11 9XR

- 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 Mrs S R Begum for a full award of costs against the Council of the London Borough of Barking & Dagenham.
- The appeal was against the refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for development described as 'Application for Prior Approval. Demolish existing single storey rear WC and associated bay. Proposed new single storey rear extension (Depth 6m, Height to eaves 2.85m and maximum height 3m).

Costs application 2 in relation to Appeal Ref: APP/Z5060/D/17/3191891
58 Salisbury Avenue, Barking, Essex IG11 9XR

- 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 Council of the London Borough of Barking & Dagenham for a full award of costs against the Mrs S R Begum.
- The appeal was against the refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for development described as 'Application for Prior Approval. Demolish existing single storey rear WC and associated bay. Proposed new single storey rear extension (Depth 6m, Height to eaves 2.85m and maximum height 3m).

Decisions

1. The application for an award of costs in respect of application 1 is refused.
2. The application for an award of costs in respect of application 2 is refused.

Reasons

3. The Planning Practice Guidance 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.

Cost application 1

4. The applicant has applied for an award of costs based on the Council’s unreasonable behaviour in not taking into account case law\(^1\) which it

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\(^1\) Hilton, R (on the application of) v Secretary of State for the Home Department [2016] EWHC 1861 (Admin) (15 June 2016).
highlighted as being relevant to the consideration of the application. The failure to take the case law into account resulted in the Council making an inaccurate and poor decision. The applicant, therefore, incurred wasted expense in submitting an appeal which should not have been necessary.

5. However, the applicant’s position is based on a reading of the officer’s report for application reference 17/00870/PRIOR6. The appealed application is referenced 17/00860/PRIOR6 and the officer’s report in that case does give due consideration to the highlighted case law.

6. As such, the Council’s behaviour was not unreasonable and did not result in unnecessary or wasted expense, as described in the Planning Practice Guidance. A full award of costs is not, therefore, justified.

Costs application 2

7. The Council has applied for an award of costs on the basis of the applicant’s failure to consider the analysis of the proposal set out in the relevant officer’s report. As established above, that analysis gave due consideration to the case law relied upon by the applicant.

8. I have already found that the applicant’s cost application should fail because it was based on a reading the wrong officer’s report. Nevertheless, even if the applicant had taken into account the Council’s position on the case law, the appeal system exists to test the decisions of local planning authorities. Whilst I have found against the applicant in the main decision, I consider that the matter was not so clear-cut that exercising the right to appeal amounted to unreasonable behaviour on the part of the applicant.

9. Therefore, the appellant’s behaviour was not unreasonable as described in the Planning Practice Guidance and a full award of costs is not justified.

Simon Warder
INSPECTOR