
Costs Decisions

Site visit made on 22 November 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 6 December 2016

Costs application in relation to Appeal Ref: APP/U5360/C/16/3145839 95 Olinda Road, Hackney, London, N16 6TS

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mondale Estate Limited for a full¹ award of costs against the Council of the London Borough of Hackney.
 - The appeal was against an enforcement notice alleging the unauthorised construction of an outbuilding in the rear garden of the property.
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Costs application in relation to Appeal Ref: APP/U5360/W/16/3145838 95 Olinda Road, Hackney, London, N16 6TS

- 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 Lipschitz for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of an application to grant planning permission for the retention of a single storey outbuilding at the rear of the property.
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Reasons

1. I have considered these applications in the light of advice contained in the Government's Planning Practice Guidance on such matters. This advises that irrespective of the outcome of the appeals 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.
2. There is a significant degree of overlap with these applications as they concern the same development albeit in respect of two separate appeals from two different appellants. I will deal firstly with the application concerning the enforcement notice in terms of the legal grounds and then come on to matters of substance in relation to the development itself and the other grounds pursued in relation to the enforcement appeal. Parts of the written submissions on behalf of the applicants are not relevant to these costs applications but a repeat of arguments made in support of the appeals.
3. For the reasons set out in the Appeal Decisions I consider that the notice was properly issued and then lawfully served and consequently the Council have not behaved unreasonably in this respect. As to the claims made for the applicants about the nature of the development that has taken place I consider that they appear to be unfounded and not borne out by evidence. I therefore find that

¹ It is not clear from the written submissions whether the applications are for full or partial costs but the former is assumed with both

the descriptions of development set out in the alleged breach section of the enforcement notice and the planning refusal notice were fair and not wrong as asserted for the applicants. Again there is nothing to suggest that the wording was clearly incorrect and consequently no basis for the argument that the Council have behaved unreasonably in this respect.

4. As to the substantive issues, which concern the ground (a) arguments on the s174 appeal and the s78 appeal, whilst I have not agreed with the Council and have decided to grant planning permission for the development, I consider that a reasonable case was made out drawing on policy and supplementary guidance. It is evident that I found that there was likely to be some departure from the guidance but that there were particular circumstances in this case which warranted an exception being made. On the matters of substance the situation was not clear cut and it was not unreasonable for the Council to oppose the development for the reasons they have advanced.
5. As to the ground (f) and (g) arguments, I have not needed to address these as the appeals succeeded on other grounds. However, I would add that I consider there was nothing unreasonable about the terms of the notice in these respects and the Council's statement of case explains why the requirements and compliance period were so defined. If these grounds had fallen to be considered then it would have been necessary to consider whether the requirements were excessive and the time period too short. Even if that had been the conclusion reached it does not mean that this would necessarily equate to unreasonable behaviour on the part of the Council in the sense applying to costs applications.
6. I should add that the comments of the agent about permitted development rights and the "Mansi"² principle do not mean that it was unreasonable for the Council to require the demolition of the whole building as that was what I have found to be the breach and removal would remedy that breach. No plans were provided to show how as an alternative to complete demolition the building could be modified to reduce its size so as to potentially bring it within any "permitted development" tolerances. If such an argument was to be taken seriously then it was for the applicants or their agent to produce such documentation to demonstrate what definable alternative requirements could be substituted instead, having regard to the need for a notice to be clear on its face³.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated with either of the appeals in question.

Decisions

8. The applications for awards of costs are refused.

N P Freeman

INSPECTOR

² *Mansi v Elstree RDC* [1964] 16 P&CR 153

³ *Miller Mead v MHLG* [1963] 1 All ER 459