
Costs Decision

Site visit made on 22 November 2016

by Alwyn B Nixon BSc MRTPI

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

Decision date: 13 December 2016

Costs application in relation to Appeal Ref: APP/L5240/C/16/3144313 78 London Road, Croydon CR0 2TB

- 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 the Council of the London Borough of Croydon for a partial award of costs against Mr Mohammed Mussa.
 - The appeal was against an enforcement notice alleging the unauthorised erection of two dormer roof extensions and installation of shutters, shutter box and guide rails and the property.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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.
3. The application is for a partial award of costs in respect of the appeal on ground (a) against the enforcement notice so far as it relates to the unauthorised roof dormer extensions. In short, the Council draws attention to the fact that planning permission had previously been refused for this form of development and that an appeal (APP/L5240/A/14/2228235) against that decision was dismissed on 20 July 2015. The enforcement notice was issued on 7 January 2016. The Council says that in the light of that appeal decision it is clear that an appeal against the enforcement notice on the basis that planning permission ought to be granted for the roof dormer extensions would have no reasonable prospect of success.
4. The appellant has not responded to the application for an award of costs.
5. Whilst the planning application the subject of appeal decision APP/L5240/A/14/2228235 also involved other elements of development, the appeal decision dealt specifically with the planning merits of roof dormer extensions of a similar form at this address. Paragraph 20 of the appeal decision (within a section headed "*Character and appearance*"), reads:

"The addition of flat roofed dormers to each roof plane at ridge height would significantly compromise the appearance of the host building. Their crude box like form would bear no correlation with any other aspect of the building and would upset the harmony with the adjacent building. Whilst set back from the

eaves, the roof dormers would be highly visible from the street appearing as an awkward and obtrusive feature that detracts from the silhouette of the three buildings against the skyline. Consequently, there would be a severe adverse effect on the character and appearance of the host building and the street view."

6. At paragraph 24 the decision continues:

"Taking all of the above into account, I conclude that both the roof dormers and the rear extension would have a significant adverse effect on the character and appearance of the host building and surrounding area. As such, it would be contrary to LP Policy SP4.1, the thrust of LP Policy SP4.2, Policies 7.4 and 7.6 of the London Plan and paragraphs 56 and 58 (of) the Framework which all seek, amongst other things, high quality design that responds to its environment."

7. The roof extensions that have been constructed (and indeed were evidently in place at the time of the previous Inspector's visit) exhibit essentially the same physical characteristics as the similar form of roof dormer development rejected on appeal in 2015 because of its poor design and adverse effect upon the character and appearance of the host building and surrounding area. Given the earlier Inspector's findings and conclusions on such a similar matter, I consider that it would have been very clear to the appellant that an appeal on ground (a) in respect of the roof dormer extensions that have been constructed at 78 London Road would have little prospect of success. It is difficult to conceive how any sensible assessment of the previous appeal decision could lead to a different conclusion as to the prospect of success.
8. Paragraph 53 of the National Planning Practice Guidance states that..... *the right of appeal should be exercised in a reasonable manner. An appellant is at risk of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when.....the development is not in accordance with the development plan and no material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise.....the appeal follows a recent appeal decision in respect of the same, or a very similar development on the same, or substantially the same site, where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.....in an enforcement appeal, when a recent appeal decision relating to the same or a very similar development makes plain that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question.* All of these given circumstances where an appellant will be at risk of an award of costs are pertinent to this case.
9. In the light of the above, I consider that the pursuit of a ground (a) appeal against the enforcement notice in respect of the roof extensions, when the appellant was aware of the previous appeal decision and would have known that there was not a reasonable prospect of the appeal succeeding in this respect, amounts to unreasonable behaviour. As a result of this behaviour the Council has been put to unnecessary expense in having to respond to the

ground (a) appeal in relation to the roof dormer extensions element of the development to which the enforcement notice relates.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Mohammed Mussa shall pay to the Council of the London Borough of Croydon the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the appeal on ground (a) in respect of the two unauthorised roof dormer extensions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Mohammed Mussa, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alwyn B Nixon

Inspector