
Costs Decisions

Site visit made on 10 January 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 31 January 2017

Costs application 1 in relation to Appeal Ref: APP/G5750/C/16/3157526 111 Grosvenor Road, Forest Gate, London E7 8JB

- 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 Newham for a full award of costs against Mr D Hussain.
 - The appeal was against an enforcement notice alleging the erection of a roof extension without planning permission.
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Costs application 2 in relation to Appeal Ref: APP/G5750/D/16/3157618 111 Grosvenor Road, Forest Gate, London E7 8JB

- 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 the Council of the London Borough of Newham for a full award of costs against Mr D Hussain.
 - The appeal was against the refusal of planning permission for the construction of a rear dormer extension and a ground floor rear extension and the installation of 2 velux windows to the front.
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Decisions

1. The applications for awards of costs are allowed in the terms set out below.

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.
3. Mr Hussain did not respond to the Council's applications for costs.

Application 1

4. Mr Hussain submitted no evidence to indicate that the alleged breach of planning control had not occurred as a matter of fact. The appeal on ground (b) was misconceived, as it was based on an argument about permitted development, which was relevant to ground (c).
 5. My decision on the appeal addressed the question of whether the extension, as first constructed or as altered, could constitute permitted development. However, aside from complaining that the Council did not advise on how to gain approval, Mr Hussain's case on ground (c) relied primarily on the fact that
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a lawful development certificate (LDC) had been granted under Ref 14/01743/CLP. He maintained that he amended the building to match the "approved plans." The approved plans could only mean the plans submitted with the LDC application, but the extension as altered and as originally constructed differed from those plans. In any event, an LDC only certifies the lawfulness of a scheme begun at the date of the LDC application, rather than a development as altered. The basis of the appellant's case on ground (c) was unclear and the evidence supporting it inadequate.

6. The appellant's case on ground (g) merely asserted that the time for compliance with the notice is unfair. He did not explain why, or even suggest an alternative period.
7. In short the reasoning behind each of the appellant's grounds of appeal was unclear and they were not supported by substantial evidence. This amounts to unreasonable behaviour and the Council was put to unnecessary expense in responding to grounds (b), (c) and (g). A full award of costs is therefore justified.

Application 2

8. The appellant's case in relation to the section 78 appeal made reference to the Council's lack of help in resolving the matter and to permitted development (PD) rights and an LDC granted on the basis of what he says were incorrect drawings. I considered PD rights in the context of a fall-back position, though the appellant did not explicitly rely on a fall-back argument. However, he did not seek to engage at all with the Council's reasons for refusal or the policies referred to. This was unreasonable behaviour and the Council was put to unnecessary expense in defending its reasons for refusal. A full award of costs is justified.

Costs Order

Appeals Ref: APP/G5750/C/16/3157526 and APP/G5750/D/16/3157618

9. 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 D Hussain shall pay to the Council of the London Borough of Newham, the costs of both appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mr D Hussain, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J A Murray

INSPECTOR