
Costs Decisions

Site visit made on 27 February 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 13 March 2017

Costs application in relation to Appeal Ref: APP/A5270/C/16/3158723 9 Alfred Gardens, Southall, UB1 2BD

- 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 Ealing for a full award of costs against Mr M Qadir.
 - The appeal was against an enforcement notice alleging the erection of an additional single storey rear extension.
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Decision

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

Procedural Matter

2. The Council's application for costs was included in its statement. The Appellant was given the opportunity and time to respond but he did not do so.

The submissions by the Council – Main points

3. The Council made its application in writing. The evidence provided by the Appellant relates to an unlawful conservatory that was erected in late 2011/early 2012 and the brick built extension that is the subject of the notice. To the extent that the Appellant is alleging that the current extension is a refurbishment of the previous one that is untenable as the Appellant must have been aware that the 2012 conservatory was a wholly different development and was demolished prior to construction of the current extension.
4. The Appellant is professionally represented and the Council submits that no reasonable planning agent could believe that the appellant has a reasonable case. The agent was fully involved in the planning application and had personal knowledge of the facts.
5. The Council gave notice to the Appellant before the notice was served that the newly built extension was a breach of planning control. The Appellant's appeal had no reasonable prospect of success and he has exercised his right of appeal unreasonably and the Council seeks a full award of costs.

Reasons

6. 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 process¹.

¹ Paragraph 030

7. The aim of the costs regime is to encourage those involved in the appeal process to behave in a reasonable way and follow good practice both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
8. In this appeal the only evidence in respect of the ground (d) appeal provided by the Appellant was an assertion on the appeal form that the extension had been built in 2011 which was more than four years before the notice was issued. However, no evidence was provided in the course of the appeal process although some documentation, which I found was not relevant to the extension that was the subject of the notice, had been sent to the Council. These documents were replicated by the Council and commented on in its statement.
9. The Appellant's professional advisers, who had made the appeal on his behalf, sent an email to the Inspectorate on 19 January 2017 in which they stated, among other things that the original footprint was maintained but the walls and roof had been upgraded; there was no new extension; and that the Appellant was not aware that rebuilding on the original footprint is not acceptable. They also appear to try to deny any responsibility by saying that they were not consulted when the work was carried out. I do not consider this to be an acceptable submission or response from a professional adviser on planning matters.
10. Given the facts of this case the Appellant's appeal had no reasonable prospect of success and he acted unreasonably within the terms of the Guidance in making the appeal. The Council had to respond to the appeal and thus incurred wasted costs and expense in so doing.

Conclusions

11. 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 full award of costs is justified.

Costs Order

12. 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 M Qadir shall pay to the Council of the London Borough of Ealing the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The Council is now invited to submit to Mr M Qadir, to whom and 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.

Gloria McFarlane

Inspector