
Costs Decision

Site visit made on 6 February 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 3 May 2017

Costs application in relation to Appeal Ref: APP/X5990/C/16/3161343 21-23 Nutford Place, London W1H 5YH

- 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 City of Westminster Council for a partial award of costs against Mr Ali Heydari.
 - The appeal was against an enforcement notice alleging the installation of a metal framed screen attached at ground floor level to the front elevation of the property.
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Decision

1. The application for an award of costs is refused.

The submissions for the Council

2. The Council seek a partial award of costs and state that their application relates to issues arising from the merits of the appeal. They consider that the appellant has behaved unreasonably by lodging an appeal on ground (c). In particular, the facts submitted to support the appeal, namely that the screen was not development as it was temporary as it was removed at night, did not match the Council's observations that the screen was there permanently. Furthermore, the Council saw that the fixing of the screen to the wall changed after the issue of the enforcement notice. It is now on hinges and has been adapted so that it is folded against the shop front when not in use. The lodging of the ground (c) appeal was therefore unreasonable and caused the Council to incur wasted expense defending it.

The response by Mr Ali Heydari

3. Mr Heydari's view is that there is no support in the Planning Practice Guidance (the Guidance) for the reasons behind the claim in this case. The screen was not a permanent installation as it was removed from the site, albeit not every day as originally intended. It was not unreasonable for him to submit that a fully removable screen regularly put away was not governed by planning control.

Reasons

4. The Guidance advises that 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. The Guidance also advises that the right of appeal should be exercised in a reasonable manner and appellants are at risk of an award of costs if they fail to have regard to the onus of proof on matters of fact.
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5. Whilst I understand the applicant's position, the appellant has a right of appeal to protect his interests in his land and it is open to him which grounds of appeal he pursues provided he submits sufficient facts to accompany them. The assessment of the ground (c) appeal is a matter of judgement. The appellant put forward a brief case to support his view that there had not been a breach of planning control. Although I disagreed with it I consider that he provided a modicum of facts and grounds to comply with the requirements of the onus of proof. Whilst I disagreed with his position in my decision that does not mean submitting the ground (c) appeal amounts to unreasonable behaviour.
6. Furthermore, as I set out in my decision letter, the current design of the screen was not before me. The appeal was determined on the basis of the screen as it was at the time when the notice was issued. Both party's comments on the new screen are therefore not relevant.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

D Fleming

INSPECTOR