
Costs Decisions

Site visit made on 10 May 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 May 2017

Costs application 1 in relation to Appeal Ref: APP/G5180/C/17/3169385 Land at 78 Manor Way, Beckenham, BR3 3LR

- 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 Mr G Hall for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against an enforcement notice alleging the erection of a 5 fence panels with trellis on top and having a total height of approximately 2.5 metres.
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Costs application 2 in relation to Appeal Ref: APP/G5180/C/17/3169388 Land at 78 Manor Way, Beckenham, BR3 3LR

- 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 Mrs J Hall for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the same enforcement notice as per application 1.
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Decisions

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

Procedural matters

2. The applications for costs were made in writing on 3 May 2017. The Council submitted its written response on 11 May 2017.

Reasons

3. 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.
4. The Council accepted that the wording of the allegation in the notice was misleading. I concluded that the allegation was clear, but incorrect. However, this defect did not render the notice a nullity and could be corrected without causing injustice. Nevertheless, the fact that the notice appeared to relate to a fence running the full length of the rear garden boundary led Mr and Mrs Hall to appeal on grounds (b) and (c). They wished to make clear that what was alleged had not occurred, at least in part, and that much of the fence along the boundary was permitted development. The failure to describe the breach of planning control accurately was unreasonable behaviour and it led to Mr and Mrs Hall incurring unnecessary expense in pursuing grounds (b) and (c).

5. The reasons for issuing the notice, as stated in the notice itself, were brief. They referred to the excessive height and inappropriate scale, location and design of the fence, together with its close proximity to the neighbouring property. They indicated that the fence constituted an insensitive form of development contrary to Policy BE7 of the Unitary Development Plan (UDP). The relevant part of that policy states that the Council will “resist the construction or erection of high or inappropriate enclosures where such boundary enclosures would erode the open nature of the area, or would adversely impact on local townscape character.” Given the location of the fence between 2 dwellings and the very limited views of the fence from the public domain, I found no significant impact on the open nature of the area or local townscape character.
6. The fact that I disagreed with the Council on this point does not make its position unreasonable. However, the Council’s evidence does not explain with any clarity what the detrimental impact on the area would be; its case on this aspect consists of vague and generalised assertions, unsupported by objective analysis. Paragraph 16-049 of the PPG indicates that this is unreasonable behaviour and the appellants were put to unnecessary expense in responding to this issue.
7. That part of the reasons for issuing the notice relating to the impact on neighbours was brief, but the Council’s reasoning on this was set out clearly in its appeal statement. Indeed, I reached the same conclusion in relation to the impact on neighbours’ living conditions, even having regard to any fall-back position. That detrimental impact provided reasonable justification for taking enforcement action, having regard to that part of the PPG concerning “Ensuring Effective Enforcement.” Whilst the costs applications suggested that there had been no objection from the neighbouring occupiers, this is incorrect. Through an administrative error, that objection was not communicated to the applicants until after the site visit, but they were then given an opportunity to comment and declined to do so.
8. The notice omitted reference to a relevant UDP policy, namely BE1, and this was first referred to in the Council’s appeal statement. However, it was clear from the notice, and from the proximity of the fence to the adjacent dwelling, that living conditions would be a material consideration. Policy BE1 enshrines that consideration in the development plan, but it is well established in any event and indeed recognised in the National Planning Policy Framework. Whether or not the omission from the notice of any reference to Policy BE1 and its subsequent introduction at the statement stage, amounted to unreasonable behaviour, I am not persuaded that this led to any wasted expense. Neighbours’ living conditions were addressed in the applicants’ grounds of appeal and statement anyway and their final comments merely urged me to disregard Policy BE1.

Conclusion

9. I am satisfied that enforcement action was justified, notwithstanding any fall-back position, and I am not persuaded that the late reference to UDP Policy BE1 resulted in any unnecessary expense. However, I conclude that the Council’s inaccurate drafting of the allegation and its failure to substantiate the reason for issuing the notice relating to the impact on the character and appearance of the area do amount to unreasonable behaviour. Furthermore,

that unreasonable behaviour resulted in wasted expense and a partial award of costs is therefore justified.

Costs Orders

10. 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 the Council of the London Borough of Bromley shall pay to Mr G Hall and Mrs J Hall, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in pursuing grounds (b) and (c) and in addressing the issue of the impact of the development on the character and appearance of the area and the alleged conflict with Policy BE7 of the London Borough of Bromley Unitary Development Plan, adopted July 2006; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicants are now invited to submit to the Council of the London Borough of Bromley, to whom 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