

Costs Decision

Site visit made on 15 June 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 17 July 2017

Costs application in relation to:

Appeal Ref: APP/G5750/C/16/3162766

Land at 167 Sherrard Road, Forest Gate, London E7 8DY

- The application is made under the Town and Country Planning Act 1990 sections 174 and 322, 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 K Patel.
 - The appeal was against an enforcement notice alleging: Without planning permission the erection of an extension.
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Decision

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

Reasons

National guidance

2. National guidance on awards of costs is set out in the *Planning Practice Guidance* [hereafter “the PPG”]¹. The PPG states that in planning appeals and other planning proceedings parties normally meet their own expenses. All parties are expected to behave reasonably. The 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. The PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the appeal process or substantive, relating to the merits of the appeal. It provides some examples of the types of behaviour that might be held to be unreasonable, and which may give rise to an award of costs against an appellant. These examples include persisting with an appeal against an enforcement notice on the ground that planning permission ought to be granted when a recent appeal decision for the same, or similar, development has made plain that the development should not be allowed. The list is not exhaustive.

The Council’s costs application

4. The Council’s application for costs is made on the basis that the appellant has not exercised the right of appeal responsibly as the appeal had no reasonable

¹ *Planning Practice Guidance* is a web-based resource that was launched by the Department for Communities and Local Government on 6 March 2014. It provides, among other things, national guidance on costs awards, replacing the guidance formerly provided by Circular 03/2009. Its guidance on awards of costs is found in the section titled “Appeals”.

prospect of success, i.e. on substantive grounds. On ground (b) there could have been no doubt that the extension existed as a matter of fact. The appeal on ground (c) was based on a misunderstanding by the appellant and was ill-informed. The appeal on ground (f) was also based on a critical misunderstanding of the planning system and appeal process. As such the Council has incurred wasted expense in having to deal with the appeal.

The appellant's response

5. In response the appellant says he has tried to resolve matters with the Council including through the submission of a planning application but the Council had said it could not provide any advice beyond that of complying with the notice. A further email sent by the appellant had remained unanswered. The appellant had been forced to make the appeal because, whilst having tried at every opportunity, he had been unable to find a solution.

My assessment and conclusions

6. There had been an earlier appeal against a refusal of permission for the same, or very similar development, which had been dismissed. The Council had warned the appellant that it would seek an award of costs if a further appeal was made against the enforcement notice. Whilst an appeal on ground (a)² (amongst other grounds) had been lodged, in the event it was not pursued. The Council has not sought to apply for costs in respect of the lapsed appeal on ground (a).
7. With regard to grounds (b), (c) and (f), not all of the appellant's points sat squarely within the respective grounds which they purported to support. However, with the complexities of planning law it is not unusual, even with represented appellants, that misunderstandings arise as to the scope of the various grounds in enforcement appeals. An appellant should not be penalised simply because he/she makes a mistake about what can be considered under a particular ground. That would not in itself amount to unreasonable behaviour.
8. The appellant's evidence was quite sparse but the points made, collectively, did raise some issues that were appropriately considered under the legal grounds. Even though he brought no alternative scheme, and thus there was little merit in his case, I can also understand why, in a situation where he was trying to find a solution, he would wish consideration to be given to the possibility of any lesser steps.
9. The earlier appeal focussed upon planning merits, whereas in the enforcement appeal there were wider grounds which would not have been available to the appellant in the earlier proceedings. Whilst I did not, in the end, conclude in the appellant's favour I do not consider him to have acted unreasonably in pursuing grounds (b), (c) and (f) in the overall circumstances of this case.
10. For these reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Susan Wraith

INSPECTOR

² An appeal on ground (a) is that planning permission should be granted for the development alleged.