
Costs Decision

Site visit made on 3 July 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 24 August 2017

Costs application in relation to Appeals Ref: APP/X5990/C/16/3164401 and 3164402; APP/X5990/C/16/3164911 and 3164912.

Ground Floor and Lower Ground Floor Flat, 79 Hamilton Terrace, London NW8 9QX

- 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 Westminster for a partial award of costs against Mr Khuram Yousaf and Mrs Ayah Elmaazi.
 - The appeals were against two enforcement notices alleging the installation of French doors and windows at upper and lower ground floor levels on the rear elevation of the building; and the installation of a wooden staircase at the rear of the property.
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Decision

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

Submissions of the Council

2. The Council seeks an award of costs incurred in dealing with the appeals under grounds (c) and (f) in appeals 3164401 and 3164402, together with costs incurred while dealing with ground (f) in appeals 3164911 and 3164912.
3. The appeal documentation submitted was brief on these grounds and lacked precise detail. It made incorrect references to case law, including irrelevant case law, which was not expanded upon.
4. On the ground (c) appeals, the Council spent additional time providing evidence to counter misleading statements as to the *Burroughs Day* case¹, which fell below the standard to be expected in professional representation. Considerable time was spent in obtaining photographic evidence to refute those statements. The Respondents referred to changes to the fenestration as "ordinarily" permitted development, yet the appeal site comprised flats.
5. The appeals under ground (f) had no reasonable chance of success given the lack of any evidence to disprove the accuracy of elevational drawings. The Respondents deliberately threw doubt on their accuracy without factual basis. Irrelevant references were made to case law and this ground of appeal was not seriously pursued.
6. The failure to provide evidence to support these grounds of appeal was unreasonable behaviour and caused the Council unnecessary expense in defending the appeals.

¹ *Burroughs Day v Bristol City Council* [1996] 1 PLR 78

Submissions of the Respondents

7. The *Burroughs Day* case was relevant. The appeals on ground (c) were fully addressed. The Council should have had the photographs readily to hand. They were equally relevant in considering ground (a) and the site's context, so the Council had not wasted time by including them in their statement.
8. It was made clear in the grounds of appeal that permitted development rights were not available but it was relevant to compare neighbouring properties where such rights existed and works could be carried out without planning permission. Case law referred to was relevant. The evidence to counter the accuracy of the elevational drawings proved unobtainable during the appeal as this involved contacting [presumably in vain] the previous owners.
9. Therefore there was no unreasonable behaviour.

Reasons

10. Planning Practice Guidance (PPG), Paragraph 030 ref 16-030-20140306 advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
11. The appeal documentation was not in my view inordinately brief. In relation to ground (c) the reference to *Burroughs Day* was a relevant one to make although it is unfortunate that the detailed explanation of the judgment was inaccurate. Nonetheless the argument put forward was on the whole relevant and clear enough to enable a conclusion to be made on the issue of whether the development materially affected the external appearance of the property.
12. I appreciate that the Council had to go the extra mile to refute this ground of appeal. The case made on external appearance did contain misleading statements as to the correct criteria, and as I found in the Appeal Decision the property was clearly visible from various vantage points. However when taken in the round the extra work was not so significant that it could be identified as wasted expense because this was an argument that the Respondents were entitled to make. The photographs subsequently obtained by the Council were relevant to the overall context of the site and an assessment of the planning merits. Furthermore it was not said in terms that permitted development rights were available in relation to the fenestration. On ground (f) matters, there is no evidence whatsoever to support the claim that the Respondents acted in bad faith when they cast doubt on the accuracy of the elevational drawings. That no supporting evidence was forthcoming was unfortunate but it did not entail extra work other than to point this out.
13. In my view the reference to *Tapecrown*² was relevant as it served as a reminder to consider if there was an obvious alternative remedy. In relation to ground (f) on the staircase, the appeals succeeded in part. When considered overall I do not find that there was unreasonable behaviour contrary to the guidance in PPG that led to unnecessary expense in the appeal process.

Grahame Kean

INSPECTOR

² *Tapecrown Ltd v First Secretary of State* [2006] EWCA Civ 1744