



Costs Decision

Site visit made on 21 March 2018

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 May 2018

Costs application in relation to Appeal Ref: APP/N5090/C/17/3181275 Land at 75 Princes Park Avenue, London NW11 0JS

- 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 Leo Kaufman of Redcourt Ltd for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging the construction of a 2 storey side extension, full width rear dormer and 2 storey rear extension.
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Decision

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

Reasons

2. 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. Unreasonable behaviour may relate to either procedural matters or substantive issues relating to the merits of the appeal.
3. The Council wrote to the applicant on 29 March 2017 to arrange a site visit which then took place on 20 April 2017. There was no further written notice prior to the enforcement notice being issued 2 months after the site visit. The Council did not invite the submission of a planning application. The PPG makes it clear that a local planning authority can invite a retrospective application where that would be an appropriate way forward to regularise the situation. However, what is clear is that the Council officers considered that such an application would not have been approved. There had been communication whilst planning application 15/04681/HSE was being processed indicating that in the case officer's view, the 2 storey rear extension needed to have a pitched roof in order to receive a positive outcome. In such circumstances it can be more onerous to invite a retrospective planning application if it is then going to be recommended for refusal.
4. The lack of communication about the intention of the Council is unfortunate. However, the applicant's lack of adherence to the plans that had been previously approved was also unfortunate. I do not consider that the responsibility for finding a way forward to resolve the problem rested entirely with the Council. The Council may have verbally indicated at the site visit that enforcement action was unlikely to be taken but there is no disagreement that there was a breach of planning control and previous correspondence made the

Council officers' views clear. The appellant could have submitted a regularising planning application or written to the Council to seek confirmation of what was expected in an attempt to resolve the problem.

5. The Council within its appeal statement has made errors regarding the enforcement history at the property which in fact relates to another property. The error was swiftly acknowledged by the Council shortly after it was pointed out to them by the appellant. I am satisfied that it is a human error rather than a purposeful attempt to over-elaborate the case for enforcement action. I have no evidence to indicate that this was a purposeful fabrication of events as has been suggested.
6. I am satisfied that although the Council made errors, overall this did not amount to unreasonable behaviour in relation to the procedural aspects of the case. Even if the Council had invited the submission of a planning application, it is likely that it would have been refused and that an appeal would have been necessary anyway. This appeal has not therefore resulted in wasted expense.
7. In terms of the planning merits of the case, the main issue that I identified within the ground (a) appeal decision relates to the effect of the development upon the character and appearance of the building and surrounding area. I have undertaken an assessment of the local characteristics of the area and reached a different view to that of the Council. The Council set out how they reached their decision with specific reasoning provided within the delegated report and as expanded upon within the appeal statement. I understood the Council's concerns and although I do not agree with them, the matters of relevance are largely matters of judgement.
8. Whether the Council decide to take enforcement action against the adjoining property at No 77 is a separate issue. It is not for me to assess or comment upon the expediency of taking enforcement action.
9. I am satisfied that the Council did not behave unreasonably in relation to the substantive matters in this case.

Overall Conclusion

10. The Council has not behaved unreasonably in this case. An award of costs in part or in full is not justified and the application fails.

Andy Harwood

INSPECTOR