



Costs Decisions

Site visit made on 6 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

Costs application in relation to Appeal Ref: APP/Y5420/C/18/3208547 135 Perth Road, London N22 5QH

- The applications are 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 applications are made by Mr Joshua Jacob Friedlander for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against an enforcement notice alleging the material change of use of a rear garden outbuilding to a dwellinghouse.
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Costs application in relation to Appeal Ref: APP/Y5420/X/18/3219363 135 Perth Road, London N22 5QH

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Joshua Jacob Friedlander for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of a certificate of lawful use or development for use of the rear outbuilding as a separate self-contained residential flat.
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Decision

1. Both applications for an award of costs are refused.

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is contained in paragraph 031. The application for costs was made in writing in accordance with the guidance at paragraph 035.
3. The awards of costs are largely sought on substantive grounds. Essentially, the applicant's case is that both appeals could have been avoided, had the Council properly considered the second LDC application¹ and its accompanying evidence, submitted following the issue of the enforcement notice. The Council could have withdrawn the notice and objectively assessed the submitted evidence, which would have then enabled an LDC to be granted. The Council also erroneously concluded that the notice was in force, even though an appeal had been submitted and it refused the second LDC application on that basis. The applicant had made the Council aware of these matters during the appeal process.

¹ Council Ref: 2018/3552.

4. The list of examples of unreasonable behaviour at appeal which may put a Council at risk of an award of costs concerning the substance of the case are in the PPG at paragraph 049. The list is not exhaustive but includes failing to produce evidence to substantiate a reason for refusal on appeal, making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, acting contrary to, or not following, well-established case law and not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management.
5. The evidence submitted with these appeals included Statutory Declarations from a former owner of the property and a former occupier of the outbuilding, both attesting to its continuous use as a dwelling for a period of more than four years. Supporting documentary evidence including copies of Assured Shorthold Tenancies covering a four-year period were also supplied. In defending the appeal, the Council largely relied on evidence obtained at site visits in July 2011 and January 2018, together with inferences drawn from a prior approval application submitted in June 2017 for a large single storey rear extension to the main dwelling², all of which it considered cast doubt on the applicant's claim.
6. In its written submissions the Council undertook a detailed, specific assessment which supported its view that the available evidence contradicted the applicant's claim of continuous use of the outbuilding as a dwelling on the balance of probability. The Council also offered a detailed explanation as to why the applicant's evidence should only be afforded limited weight. In an enforcement appeal made on ground (d) and in LDC appeals, the onus is clearly on the applicant to submit evidence to demonstrate why their appeals should be allowed. Therefore, the Council was not in the position of having to disprove the applicant's evidence. In its submissions the Council clearly set out in an objective manner why it considered that the civil burden of proof had not been discharged. The Council's case showed that it was possible to reach a reasoned, opposite conclusion to that of the applicant, based on a different interpretation of the factual evidence.
7. The Council mostly confined its assessment of the available evidence to the four years immediately prior to the date of the notice. However, had any four-year period been considered in detail, it is apparent from the Council's submissions that it would have then have placed greater reliance on what it regarded as a lack of clarity over exactly where at the property the former occupier lived, together with what it regarded as a lack of precision in documentary evidence submitted, when assessing the weight to be applied to the applicant's evidence. The Council is also then likely to have placed greater emphasis on other matters referred to in its submissions, including the absence of any Council Tax and Building Control records for the outbuilding, together with details of the 2011 investigation, as factors casting doubt on the applicant's claim. Therefore, I do not regard the Council's approach to assessing the time limit for taking enforcement action as inevitably undermining its case at appeal.
8. At s191(2)(b), the Act provides that uses and operations are lawful where they do not constitute a contravention of any of the requirements of any enforcement notice then in force. As there was an outstanding appeal the

² Council Ref: HGY/2017/1812.

notice could not have been in effect or, by extension, in force on the date the second LDC application was made. Therefore, the Council's reason for refusing the second LDC application does not withstand scrutiny. However, the Council's case in these appeals clearly showed that it would not have been persuaded by the evidence submitted with the second LDC application in any event. Consequently, to my mind that application would most likely still have been refused, thereby requiring the applicant to continue with his appeals. Moreover, had the Council withdrawn the notice it would then have risked the applicant seeking an award of his costs on procedural grounds.

9. Accordingly, whilst ultimately I did not share the Council's conclusions, overall it has nevertheless substantiated the case at appeal. In particular, I have not found anything which suggested that the Council has behaved in a way similar to any of the examples from the PPG referred to above.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR