



Costs Decision

Site visit made on 14 August 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2019

Costs application in relation to Appeal A Ref: APP/N5090/C/18/3213397 and Appeal B Ref: APP/N5090/W/19/3223503

3 Saddlescombe Way, North Finchley, London N12 7LS

- 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 Hassan Somani for a full award of costs against the Council of the London Borough of Barnet.
 - Appeal A was against an enforcement notice alleging Without planning permission, the construction of a single storey rear extension (1), an upwards extension of the former garage (2), a first floor side extension above the former garage (3), and a roof conversion consisting of a hip-to-gable roof extension and rear dormer extension (4). As shown in the attached photographs A and B.
 - Appeal B was against the refusal of planning permission for "Variation of condition 1 (Plan Numbers) pursuant to planning permission B/02515/13 dated for 06/08/13 for 'Single storey rear extension. First floor side extension over existing garage including new pitched roof and partial conversion of existing garage into habitable space. Alterations to roof including 1no. front, 1no. side and 2no. rear roof-lights to facilitate a loft conversion'. Amendments include increase in height of the flat roof of the converted garage, alteration to rear glazing, alterations and extensions to main roof design including hip to gable, rear dormer and new side gable window and alterations to single storey rear extension and first floor side extension."
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ 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.
3. The appellant's case is that he has been misled by the Council; that the enforcement action taken and associated professional costs incurred were disproportionate and could have been avoided in favour of re-submitting a planning application, originally submitted in November 2016 (Ref 16/7318/RCU); that he should not have been asked to withdraw the same planning application thereby incurring abortive costs and that many aspects of the development could have been dealt with as permitted development.
4. The Council confirmed that it invited a retrospective planning application with a view to regularising the development, which had not been built in accordance

¹ Reference ID: 16-030-20140306

with planning permission B/02515/13; that this was submitted in November 2016, but later withdrawn after the Council determined that the plans did not accord with what had been built on site; an enforcement notice served in July 2017 against the development was later quashed on the basis of being invalid; that a second retrospective planning application, Ref 18/6670/S73 (that became the subject of Appeal B) was submitted in late 2018. The appellant does not dispute this chronology of events.

5. That the Council advised that drawings were inaccurate, leading to the first retrospective planning application being withdrawn at the request of the Council, and despite any abortive costs, did not amount to unreasonable behaviour on its part. Although a revised planning application was later submitted, the Council was not duty bound to approve such an application and it was entitled in the meantime, irrespective of whether the property was tenanted, to commence enforcement proceedings once it had reached the view that the development was unacceptable. I am not persuaded from the information before me, despite the appellant's representations regarding possible lesser steps, that such action could have been avoided, when taking into account the Council's opposition to the development as a whole.
6. Whilst an original enforcement notice was quashed as it was found to be invalid, any application for costs on the basis of unreasonable behaviour connected to those proceedings would need to have been made at the appropriate time. It appears that no such application was made. In any event, I cannot be certain that the appellant's case in relation to the original enforcement action was wasted in terms of its applicability to the current appeal.
7. Although the appellant considers that the enforcement proceedings were unnecessary and protracted, he has not been prevented from challenging the Council's action through the appeal process and there is no suggestion that the Council was not within the legal time periods for taking enforcement action.
8. In terms of permitted development I have set out in my decision that I did not agree with the view that certain aspects of development did not constitute a breach of planning control. Although I have found the development to be acceptable, this does not mean that the Council was unreasonable to take a contrary view, or that the action it sought to take, in light of that view, was disproportionate.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR