



Costs Decision

Site visit made on 22 November 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Costs application in relation to Appeal Ref: APP/C5690/C/19/3221456 124 Nelgarde Road, London SE6 4TP

- 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 Lincoln Adam Moses for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against an enforcement notice alleging the construction of a roof extension to the rear roof slope of the main building and to the roof slope of the rear projection.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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.
3. The applicant claims that the Council has behaved unreasonably by withholding important documents, incorrectly claiming the fee had not been paid, not providing detailed justification for taking enforcement action and providing no analysis of the alleged conflict with planning policy. It is argued that this has incurred wasted or unnecessary expense in making the appeal in the first place and because of the additional time taken by the agent in repeatedly requesting information or seeking clarification.
4. The PPG makes it clear that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include a lack of co-operation with the other party or delay in providing information or other failure to adhere to deadlines. Local planning authorities are also at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by a failure to produce evidence to substantiate each reason for refusal on appeal or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. Firstly, there has been a great deal of confusion about whether the fee had been paid. This appears to have stemmed from an error on the enforcement notice, in which the incorrect fee was quoted. The matter was ultimately

- resolved but only after the applicant's agent had made considerable efforts to explain matters to the parties involved. The Council has acknowledged the error and has apologised, however, the length of time taken and efforts required on behalf of the applicant signals a lack of cooperation.
6. Further, the Council failed to supply the relevant documents with the appeal questionnaire. The applicant's agent was not in full possession of all the facts and information before he was required to submit his appeal statement. The Council's defence is that the agent should have been able to find these documents himself online. Whether or not that is the case is irrelevant. Aside from the risk of relying on out-of-date or incorrect information, the Rules¹ set out a procedure that should be followed. The PPG is clear that failure to adhere to deadlines runs a risk of costs against the offending party.
 7. The Council also failed to submit an appeal statement and instead sought to rely on the delegated enforcement report, submitted with its response to the costs application. This hindered the agent as he had to make several assumptions about the reasons behind the notice and the Council's objections to the development.
 8. The Council claims that the development was fully considered under the relevant policies. Nonetheless, there is limited evidence of objective analysis which takes account of the site-specific circumstances. The enforcement report fails to examine permitted development rights in connection with any obvious alternative to demolition. Had the Council undertaken more diligent investigation, it may have avoided the need to serve the notice in the first place.
 9. I also acknowledge the Council's acceptance of its errors and I note that it has reviewed and improved its procedures. Unfortunately, this does not assist the applicant in this case. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Council of the London Borough of Lewisham shall pay to Mr Lincoln Adam Moses, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Council of the London Borough of Lewisham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Debbie Moore Inspector

¹ As set out in the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002.