



Costs Decision

Site visit made on 13 February 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2020

Costs application in relation to Appeal Ref: APP/M5450/C/19/3234911 Land at 4 Carlton Avenue, Kenton, Harrow HA3 8AY

- 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 Harrow for a partial award of costs against Mrs Anita Jindal.
 - The appeal was against an enforcement notice alleging "Without planning permission: the material change of use of the Land from a single family dwelling house to two residential units ("**Unauthorised Use**") and construction of a single storey front extension incorporating front porch; single and two storey side to rear extension ("**Unauthorised Development**")."
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (the Guidance) advises that all parties in appeals are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The Council does not state if it is applying for a full or partial award of costs. It must be the latter as the application is restricted to the costs incurred by the Council in dealing with the appeal on ground (a) as lodged against the **Unauthorised Development**. Costs are not sought for the other grounds of appeal brought. This application for costs has been considered on its merits in the light of the costs advice found within the Guidance, the appeal and costs papers, and all the relevant circumstances relating to the enforcement notice and the appeal.
4. The Council's application for an award of costs is substantive in nature, relating to the planning merits of the appeal. Paragraph 053 (concerning appeals and awards of costs) in the Guidance indicates that the right of appeal should be exercised in a reasonable manner and that appellants are at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding. For example, sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. Appellants are then at risk of an award of costs if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question.

5. The case the Council has presented falls fairly and squarely within the confines of paragraph 053. The enforcement notice also identifies an **Unauthorised Use**, but the appeal on ground (a) was brought only against the **Unauthorised Development**. The operational development that has taken place is indeed identical or very similar to that proposed in the previous planning application ref. P/5325/18 which was dismissed at appeal (ref. APP/M5450/D/19/3227599) on 1 July 2019 after the Inspector decided that the proposed extensions, which had been completed by then, were unacceptable.
6. The enforcement notice was issued shortly after that appeal decision but the Council found it expedient to do so. The Council says that the appellant was made fully aware of the breach in November 2018. The Council cannot be described as being uncooperative. Enforcement action was postponed to allow time for the consideration of the previous planning application ref. P/5325/18 and even for the outcome of the subsequent section 78 appeal. Understandably, the Council did not wish the development to become immune from enforcement action owing to the passage of time. In any event, no fully worked out revised proposals have been submitted in the appeal before me.
7. It may not have been unreasonable to pursue the matter once again if changes to the development were being offered to address the fundamental design drawbacks of the development previously identified. I understand that the external finish has been altered at the front and the rear since the previous appeal decision. This is a largely cosmetic change and the previous Inspector took into account "... the appellant's willingness to alter the external finishes...". The previous appeal decision was comprehensive in its scope and had regard to the development at 2 Carlton Avenue and to other porches and side extensions in Carlton Avenue. Circumstances had not materially changed in the intervening period since the last appeal decision. The appeal on ground (a) in respect of the **Unauthorised Development** had no reasonable prospect of succeeding. The right of appeal was not exercised in a reasonable manner and this has put the Council to the wasted expense outlined in its costs application.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs to the Council is justified.

Costs Order

9. 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 Mrs Anita Jindal shall pay to the Council of the London Borough of Harrow, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appeal on ground (a) as lodged against the **Unauthorised Development**; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The Council of the London Borough of Harrow is now invited to submit to Mrs Anita Jindal, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dale

INSPECTOR