
Costs Decision

Site visit made on 17 February 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Costs application in relation to Appeal Ref: APP/H5960/C/19/3230020 23 Montserrat Road, London SW15 2LD

- 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 Wandsworth for a full award of costs against Mr M Abowitz.
 - The appeal was against an enforcement notice alleging the unauthorised installation of uPVC windows at front elevation of the property ('the notice').
-

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. An application for costs will need to demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. Amongst its terms, the PPG¹ states that in relation to enforcement appeals, the onus of proof on matters of fact is on the appellant. Whilst a failure to prove a case does not automatically leave an appellant at risk of an award of costs, it may if an appeal is made and no reasonable attempt to prove the case is made.
4. In its application, the Council claims that the actions of the appellant were unreasonable and led to unnecessary and/or wasted expense.
5. It states that it approved an application for the replacement of the uPVC windows with timber windows in June 2019, subject to a condition that the works should be carried out within 9 months of the date of the decision. Therefore, the appeal under ground (g) should have been withdrawn at the time of that decision.
6. With reference to the ground (e) appeal, the Council states that it served a copy of the notice on all those with an interest in the land, as required by section 329 of the Town and Country Planning Act 1990 (the Act). Had it not done so, the appellant would not have been able to lodge a valid appeal.

¹ Paragraph: 053 Reference ID: 16-053-20140306. Revision date: 06 03 2014

7. The appellant, Mr Abowitz, made no response to the application.
8. Although the Council approved planning permission for the replacement of the uPVC windows with timber windows, the appellant lodged his appeal against the terms of the notice that the Council had issued. The two are different matters and the appellant had a right to make this appeal. On the ground (g) appeal, I found that the period for compliance fell short of what should reasonably be allowed, and I extended this period. As such, with regards to that appeal, I do not find that he acted unreasonably.
9. In essence, Mr Abowitz's case in his ground (e) appeal was that, as a result of the Council's actions in serving copies of the notice, the owner of the property was unable to make an appeal. Save for similarly worded single sentences to this effect in both the appeal form and his statement of case, no evidence to substantiate his claim was submitted.
10. The Council used the Official Copy of Register of Title from the Land Registry to ascertain the address of the company that owns the property. A copy of the notice was served at that address, by recorded delivery. No-one was available to sign for it, and it was returned to the delivery office where it waited for collection for some weeks. That it was not collected does not equate to a failure by the Council to adhere to the statutory requirements. Furthermore, a copy of the notice was served on the owner at the appeal property.
11. As such, the Council submitted comprehensive evidence to show that it had followed the requirements of section 329 of the Act, which relates to the service of notices. The appellant did not challenge the Council's ground (e) submissions.
12. Furthermore, the question arises as to how the appellant would have known that the owner was not served with a copy of the notice. To be sure of this, he would have had to have been in contact with the owner. Given that the appellant made his appeal several days before the notice came into effect, in this scenario it seems most likely that the owner would have been in a position to make an appeal. It is surprising that, even had the owner not had an opportunity to do so, the appellant provided no evidence from the owner to substantiate the ground (e) appeal.
13. I therefore conclude that the appellant had no reasonable prospect of success on the ground (e) appeal, and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated, and that an award of costs is justified.
14. Given my finding on the costs application relating to the ground (g) appeal, above, the award of costs should be limited solely to the work that was undertaken on the ground (e) appeal. Work undertaken with regards to the questionnaire and its associated documentation would have had to have been carried out for both appeals, so did not constitute unnecessary work.

Costs Order

15. 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 Mr M Abowitz shall pay to the Council of the London Borough of Wandsworth, the costs of the appeal proceedings described in the heading of this decision

limited to those costs incurred in the appeal on Ground (e); such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Mr Abowitz, 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.

Roy Curnow

INSPECTOR