

Costs Decision

Site visit made on 11 March 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 April 2020

Costs application relating to Appeal Ref: APP/U5930/C/19/3229632 113 Kitchener Road, Walthamstow, London E17 4LJ

- The application is made by the Council of the London Borough of Waltham Forest under the Town and Country Planning Act 1990, sections 174 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5), for a full award of costs against James Clair.
 - The appeal was against an enforcement notice alleging the erection of a single-storey garage/side extension and it proceeded only on the ground set out in section 174(2)(d).
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Costs decision

1. The application for an award of costs is refused.

Reasons for the costs decision

2. The Government's Planning Practice Guidance ("the Guidance") indicates that the parties to an appeal 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 maintain that the appellant did not submit substantive evidence in support of the appeal. They point to the Planning Inspectorate's guide that advises appellants that in a ground (d) appeal it is the appellant's responsibility to provide evidence to prove their case. The Guidance states that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
 4. The evidence put forward by the parties in the appeal was not in dispute. The appeal decision turned solely on whether the evidence showed that the building operations had or had not been "substantially completed" by 26 April 2015. There is no definition of "substantially completed" in the legislation nor in current Government guidance, and there is no directly relatable case law. The Council relied on advice in a Government circular that had been withdrawn. The appellant relied on images that showed that the development was well-advanced on that date.
 5. In the absence of any definition of the term "substantially completed", it was not unreasonable for the appellant to seek to maintain an argument that the building operations could have advanced to the point at which they had
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become immune from enforcement action. In my opinion, the argument was unlikely to succeed from the outset on the strength of the evidence, but it cannot be said to have had "no reasonable prospect of succeeding", which is the more stringent test set out in the Guidance.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. An award of costs is not justified and the application has therefore been refused.

D.A.Hainsworth

INSPECTOR