



Costs Decision

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

**Costs application in relation to Appeal Ref: APP/A5270/C/19/3241295
85 - 87 The Broadway, Southall, Middlesex UB1 1LA**

- 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 Ealing for a full award of costs against Mr Zafir Khan.
 - The appeal was against an enforcement notice alleging the erection of a rear roof extension, installation of metal railings on the flat roof of the first floor and the material change of use of the first and second floor of the property to six self-contained flats.
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Decision

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

Reasons

2. Parties in planning appeals and other planning proceedings normally meet their own expenses. However, Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 crux of the Council's case is that the appellant has failed to provide a statement, setting out the reasons why the appeal on ground (b) was being pursued. This has resulted in wasted time and expense resisting the appeal and defending their decision.
4. The appellant is professionally represented. However, most of the evidence provided, relates to the merits of the development. No appeal was advanced under ground (a), and no fee was been paid. The remainder of the evidence for the appeal under ground (b), is that the service of the notice was unfair, as a further planning application had been submitted.
5. Although, I have little information about the status of that application, there is no obligation on the Council to approve it. Moreover, S172(1)(b) empowers a Council, as the local planning authority, to issue an enforcement notice, when it appears to them that there has been a breach of planning control and they consider it expedient, having regard to the provisions of the development plan and other material considerations. This is a discretionary power and it is for the Council to decide whether it is expedient, and proportionate to issue a notice. The issue of whether it was expedient, for the Council to issue the notice, in

the particular circumstances of the case, would usually be dealt with by way of judicial review and is not a matter for this appeal.

6. In enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. As to providing evidence to substantiate the grounds of appeal, the case for the appellant was set out in the original grounds of appeal and was not subsequently enlarged upon. The appellant was invited to provide evidence to support their assertions under ground (b), or withdraw the appeal. The appellant did not subsequently develop his case to deal with the questions as to why the development had not occurred, at the time that the notice was issued. These failures are not justified by any lack of professional planning knowledge, as the requirements are set down in clear terms and include the opportunity to contact Inspectorate case officers if anything is not understood. This lack of evidence to support the appeal constitutes unreasonable behaviour, and as a result the Council have incurred unnecessary or wasted expense.
7. The Council's evidence is clear and unambiguous. I acknowledge that the Council would incur costs whilst carrying out enforcement investigations. Nonetheless, the collection of evidence and preparation of statements, together with the normal administration associated with appeal procedures will have resulted in additional expenses.
8. PPG makes it clear that where there is unreasonable behaviour and associated unnecessary or wasted expense, then costs are to be awarded. For the reasons set out above I have concluded that both requirements have been met in this case.
9. I therefore conclude that without adequate supporting evidence, the appellant pursued a clear "no hope" case which had no reasonable prospect of success on the ground (b) appeal. Consequently, I 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 Mr Zafir Khan shall pay to the Council of the London Borough of Ealing, 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 Mr Zafir Khan, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hilary Orr

INSPECTOR