



Costs Decisions

Site visit made on 29 July 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Costs application in relation to Appeal Refs: APP/U5360/C/19/3243016 and APP/U5360/W/19/3241925

17 Ritson Road, Hackney, London E8 1DE

- 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 Jacob Kjeldgaard for a full award of costs against the Council of the London Borough of Hackney.
 - The appeals were against:-
 - an enforcement notice alleging the erection of a single storey rear and side extension.
 - the refusal of the Council to grant planning permission 2019/2169 to vary condition 2 of planning permission 2018/1849, for a single storey side and rear extension.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The Planning Practice Guidance advises that for enforcement notices, local authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
3. The application is made on the basis that the Council has behaved unreasonably by not regarding the changes as '*de minimis*' and refusing planning permission because it did not take due care in assessing the application by mis-reading the plans and not fully appreciating the height of the extension as-built in relation to the approved scheme. The Council then failed to mention the extant planning permission and discussions between the applicant and the Council to resolve the matter in its delegated reports. Furthermore, the enforcement notice itself does not mention the extant planning consent as a fall-back position.

Ground (a) appeal and section 73 appeal

4. The Council exercised its planning judgement in determining whether the development was *de minimis* or not. It found the changes to the increase in height of the extension wall, the moving of the extension off the boundary wall and changes to the design of the top of the parapet were not *de minimis* works and required planning permission.
5. I accept that the Council incorrectly reported the height of the extension wall, which would be seen by occupiers of the adjacent property No.15 in its Delegated report for the approved scheme. However, as I found in my appeal decision, the applicant's plans showing the built development compared to what had been consented were somewhat mis-leading. The Council found, nonetheless that the development had not been built in accordance with the approved scheme and that harm was caused as a result to the neighbouring occupiers. I do not find the Council failed to properly evaluate the impact of the development.
6. As a result, I find the Council has not acted unreasonably in finding the changes were not *de minimis* and in refusing planning permission for the appealed scheme. The appeal could not have been avoided.

Enforcement notice

7. The Council's report to seek delegated authority to issue an enforcement notice need not necessarily detail all correspondence and communications between the parties. I accept that the delegated enforcement report may have benefited from advising the reader that an extant planning permission existed and explaining more the difference in height between the extant scheme and what had been built. However, as I have found, the full facts and heights were hard to establish when not all of the plans were directly comparable.
8. However, regardless of exact measurements, the fact remains the development has not been built in accordance with the approved scheme – it is taller than is shown on the approved plans - and the Council found it was causing harm. The Council's delegated report on the appealed application and the delegated enforcement report together explain with sufficient clarity the harm being caused. I accept that the Council did not objectively evaluate the loss of light or specify if sunlight or daylight was its main concern. But this in itself does not mean that a loss of light cannot be considered, as indicated by the occupiers of the affected property. I find the Council exercised, rightly in my view, its discretionary powers to take enforcement action and did not act unreasonably in doing so.
9. I note the applicant's references to having actively engaged with the Council, with various emails and site visits, and that there was no alert of a breach of planning control up until April 2020. However, the Council have enclosed their site notes and photographs of a later visit in May 2019 that show by then the extension had not been built in accordance with the approved plans. Even if the Council had not raised any concerns about the extension being built inside the party wall, its observations in May that the extension had been built taller caused Officers to have concerns. It is apparent that, despite various discussions, correspondence and site visits, there was no successful resolution of the alleged breach that would have avoided the issue of an enforcement notice. Hence, the Council was entitled to take the enforcement action it did.

10. I accept that the Council should have considered and included the alternative lesser step of complying with the extant planning permission when drafting its enforcement notice. It is best practice to do so. However, ground (a) was appealed and the appeal could not be avoided.
11. Whilst the omission is regrettable, I do not find it amounts to unreasonable behaviour on the part of the Council. The omission was not the reason for appealing and therefore the applicant was not put to unnecessary or wasted expense in appealing ground (f), which was a simple case to put.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense at appeal as described in the PPG has not been demonstrated for either appeal. An award for costs is therefore not justified.

K Stephens
INSPECTOR