



Costs Decision

Site visit made on 29 September 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Costs application in relation to Appeals Ref:

APP/U5360/C/19/3240523

APP/U5360/C/20/3248599

APP/U5360/C/20/3248600

50 Sach Road, Hackney, London E5 9LJ

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr MY Roth of MZR Estates Limited and Mr C Perlman of Ventella Estates Limited for a full award of costs against the Council of the London Borough of Hackney.
 - The appeals were against an enforcement notice alleging - (i) the erection of a single storey outbuilding and (ii) use as a self-contained residential dwelling.
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Decision

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

Background

2. The costs application concerns three appeals against two enforcement notices. Both attacked the same unauthorised development but described the alleged breach differently; "the erection of a single storey outbuilding", to which appeal reference 3240523 relates, and a material change of use "to use as a self-contained residential dwelling", appeal references 3248599 and 3248600. The Council withdrew the notice pursuant to the appeal reference 3240523, but only after the appeals had been lodged and statements prepared.
3. There is a third notice (issued in 2013) which, although not before me, is relevant to this application.
4. 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.

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5. The applicants claim that the Council has acted unreasonably in issuing the enforcement notice and pursuing the appeal. It is argued that the notice is invalid because the time limit for the Council to use the 'second bite' provision has expired. If, as the Council maintains, there is a valid notice already in place (that issued in 2013) then the second notice would be unnecessary in any event.

6. Since the Council issued an enforcement notice citing the alleged breach in 2013, its second notice alleging the same operational development relies on Section 171B(4)(b) of the 1990 Act as amended. This 'second bite' provision states – "*the preceding subsections [relating to time limits] do not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach*".
7. In other words, s171B(4)(b) provides that if, within the appropriate four or ten year period the Local Planning Authority has taken or "purported to take" enforcement action in respect of a breach of planning control, they have a further four years in which to issue a subsequent notice, provided always that the first was not already out of time.
8. In this case, the Council issued an enforcement notice on 7 March 2013, which related to an outbuilding at the appeal premises as later alleged. The 'second bite' provision would have allowed the Council four years to take further action. However, the second notice was not issued until 2019 and so this provision cannot be relied upon.
9. The Council changed its position during the course of the appeal from initially indicating that the 2013 notice was invalid to insisting that it remained in force. If that notice was valid, then the further notice would not be necessary. In any event, the second bite provision was not available. The Council withdrew the duplicate notice which provided clarity, however, this was relatively late in the appeal proceedings. The applicants have been forced to appeal the enforcement notice and have incurred unnecessary expense.
10. 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.

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11. The applicants claim that the Council only issued the notice in relation to the change of use in the event that the notice in relation to the outbuilding may be found to be of no effect, which is considered to be further unreasonable behaviour.
12. The issue of two notices for the same development, but with different allegations, amounts to unreasonable behaviour. The consequence is that the applicants had to appeal two notices in circumstances where the alleged breach of planning control was uncertain. In addition, the notice alleging the change of use contained ambiguity and uncertainty in the way it was drafted. This affected the way the appellants presented their evidence.
13. 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

14. 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 the Council of the London Borough of Hackney shall pay to Mr MY Roth of MZR Estates Limited and Mr C Perlman of Ventella Estates Limited, 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.
15. The applicants are now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Debbie Moore

Inspector