
Costs Decision

Site visit made on 2 February 2021

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 03 March 2021

Costs application in relation to Appeal Ref: APP/H5390/D/20/3262455 4 Souldern Road, London, W14 0JE.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Bryn Harries for a full award of costs against the Council for the London Borough of Hammersmith and Fulham.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for the retention of timber decking and replacement of existing timber railings with new glass balustrade on top of the roof of back addition, in connection with the formation of a roof terrace at second floor level.
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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.
3. The appellant considers that the Council acted unreasonably by refusing planning permission based on what he contends to be a decision founded on the use of the roof as a terrace, which he asserts was an existing lawful use.
4. Other than a statement of truth, stating that the roof had been used as a terrace since the 1 January 2000, no compelling evidence, in the form of a certificate of lawfulness, to back up the appellant's statement of truth was submitted at application stage. This being particularly relevant in the light of the 2018 time/date stamped photograph submitted by an objector that shows no balustrade to the flat roof at that time. Further, I see from the documents provided, that the officer's requested further evidence to support the statement of truth. This however was not forthcoming.
5. Furthermore, as I observed on my site visit, access to the flat roof is extremely limited. The only access to the roof is by climbing through a window. The window currently being accessed off a temporary ladder from the half landing inside.
6. Accordingly, for all these reasons I consider, that it was reasonable for the Council to conclude, on the balance of probabilities, that the roof had not been used as an out door amenity space for at least four years, which would be necessary to establish a lawful use.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Philip Willmer

INSPECTOR