



Costs Decision

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

an Inspector appointed by the Secretary of State

Decision date: 05 March 2021

Costs application in relation to Appeal Ref: APP/W5780/C/20/3244226 5 De Vere Gardens, Ilford IG1 3EB

- 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 Ms Heather Patricia Reynolds McIntosh for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against an enforcement notice alleging the unauthorised extension of the property on the ground floor by six metres and change of use of the single family dwelling house into seven 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. 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. For enforcement action, local planning authorities must carry out adequate prior investigation. They 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 accurate¹.
3. In my Decision, I found that the enforcement notice does not specify with sufficient accuracy the alleged breach of planning control and the steps required for compliance. The errors are attributable, in part, to the lack of plans pursuant to a relevant planning permission at the property. The missing plans also made it difficult for the appellant to present her case. The Council sought to avoid the matter by relying on the established principle of the onus being upon the appellant. However, the missing plans signals a failure of the Council to carry out diligent investigations prior to serving the notice.
4. During the course of the appeal, it emerged that the Council did have an officer report relevant to the planning application, which described the proposed development. On this basis, I was able to deduce that the Buildings Regulations plan, on which the appellant relied, was likely to accurately reflect the planning permission. It is not clear to me why the Council did not take account of the officer report as part of its initial investigations except, perhaps, because it relied on its claim that the permission had lapsed. However, the Council's analysis on that matter was similarly limited and, ultimately, I disagreed.

¹ Para 48 PPG.

5. I appreciate that plans can sometimes go missing and this should not prevent enforcement action, where expedient. However, in this case, the Council only took time to look at the evidence that was available relatively late in the proceedings and at my prompting. Had this exercise been carried out at the outset, the Council may well have taken a different approach in relation to the appellant's property.
6. Other information submitted by the appellant included a series of 'Google earth' images with embedded dates. This information was not fully considered by the Council, despite it being highly relevant to the matters at issue. It is not clear why the Council appeared to disregard this evidence.
7. Overall, I consider that the Council has not carried out an adequate enforcement investigation prior to issuing the notice. If it had done so, it is likely that the notice would not contain contradictions, which I have explained in my Decision. Furthermore, it may be that this appeal could have been avoided altogether had the Council researched the situation more fully in respect of the appellant's property. The casual approach persisted during the appeal when further evidence was not properly considered, which would have been usual had proper case management been in place.

Conclusion

8. I, therefore, 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

9. 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 Redbridge shall pay to Ms Heather Patricia Reynolds McIntosh, 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.
10. The applicant is now invited to submit to the Council of the London Borough of Redbridge, 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