The Planning Inspectorate

Costs Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Costs application in relation to Appeal Ref: APP/A5270/C/20/3265290
Land Rear of, 181 Noel Road, Acton, London W3 0JJ

- 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 partial award of costs against Mr Malek El-Houry .
- The appeal was against an enforcement notice alleging without planning permission, the construction of a single storey detached dwelling.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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 PPG is clear that there is a right of appeal and this is expressly reiterated in respect of enforcement notices. It continues by saying that the parties in appeals are normally expected to meet their own expenses. The PPG says costs may be awarded where a party has behaved unreasonably and it says unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues and examples are given.

4. The Council's application for costs relates to substantive matters in respect of the appellant's appeal on ground (f), on the basis that the appellant made and pursued an appeal that had no reasonable prospect of success.

5. It is evident that the appellant was aware that the planning merits of the development, subject of the notice, could not be considered where there was no appeal on ground (a). However, the appellant's case sought only the retention of the building, not the use, on the basis that they would separately from the appeal process, apply for planning permission for an alternative use.

6. The appellant was given the opportunity to comment on the Council's application for costs however, they provided no response. Nevertheless and whilst I acknowledge the appellant was professionally represented, I am not certain, based on the evidence before me, that they appreciated that their case required a consideration of planning merits which could not occur in the absence of an appeal under ground (a).

7. It follows that I do not consider that the appellant acted unreasonably in making the appeal on ground (f).

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Felicity Thompson

INSPECTOR