
Costs Decision

Site visit made on 2 June 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 29 June 2021

Costs application in relation to Appeal Ref: APP/A5270/C/20/3260412 8 Wadsworth Road, Perivale, Middlesex UB6 7JD

- 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 full award of costs against Mr Ali Kitham Judy of Delta Designs Limited.
 - The appeal was against an enforcement notice alleging the construction of a front canopy extension
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Decision

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

Reasons

2. The appellant queried whether the Council's claim for costs was submitted outside of the permitted timeframes. However, the claim was made prior to the submission of final comments and was therefore submitted in accordance with the procedural rules set out in the Planning Practice Guidance (the PPG).
3. The 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. The Council considers that the appellant has acted unreasonably in relation to substantive matters.
4. The Council's claim is that the appellant's evidence related to ground (a) rather than ground (c). The Council states that the appellant's case had no reasonable prospect of success and was of no substance. In essence, the appellant's claim is that the structure is of a temporary nature and is permitted development and the appellant did not think that planning permission was required. I have dismissed the appeal as the canopy constitutes development requiring planning permission having had regard to Sections 336(1) and Section 57 of the Act and the development does not fall within permitted development rights. I have therefore dismissed the appeal.
5. The Council refers to the appellant as being professionally represented and implies that certain advice about the proceedings should have been given to the appellant both before and during the course of the proceedings. The letterhead from the agent company indicates that the company are Consulting Engineers and no details are provided of planning qualifications or familiarity with the planning and appeals procedure. It is not necessarily the case that Consulting Engineers would have taken the steps or given the advice that professional planning representatives would provide.

6. A number of arguments put forward and the way in which they have been made are more usually associated with unrepresented appellants such as the appellant not being aware that planning permission was required, events that occurred before the enforcement notice was issued, whether it was expedient to take enforcement action and comparisons with other sites.
7. The appellant through his agent did submit extra documentation which did not relate to ground (c). Nevertheless, the Council addresses this issue briefly at paragraph 6.5 of its statement by stating " *the appellant makes a number of points about properties in the area and Strategic Industrial Land. However, in the absence of a ground (a) appeal, these points are irrelevant* " and made no reference to the other extra information.
8. The Council is aware of the narrow remit of ground (c) and has in its evidence correctly concentrated solely on the matters arising which relate to ground (c). Where information fell outside the limited remit of ground (c) or was repeated, that information was simply disregarded by the Council. Although the Council says the evidence was muddled, the appellant's case was essentially set out in the appeal form and two continuation sheets. Those sheets summarised what was in other sections of the evidence including planning history, photographs of other sites and references to planning policy, and were matters which the Council knew not to be relevant to the ground (c) appeal and could be disregarded. It is therefore not clear why the Council states that it took considerable time to decipher the appellant's evidence.
9. The Council says that the appellant's evidence was largely incoherent, muddled and failed to adequately address the ground (c) appeal. Nevertheless, the Council understood the appellant's argument as it related to ground (c) and stated that the canopy extension did not fall within the permitted development right which the Council considered was most closely related to a structure in an industrial context and was able to address the appellant's argument in a concise statement.
10. The appellant and his agent clearly considered that the service of the notice was unjustified. The PPG sets out that the right of appeal should be exercised in a reasonable manner. Whilst I have not agreed with the appellant, it is evident that he and his agent are not planning professionals and had every expectation that their case had a prospect of success. I cannot therefore agree that it was unreasonable to exercise the right of appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated and the application for an award of costs fails.

E. Griffin

INSPECTOR