
Costs Decision

Site visit made on 29 June 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2021

Costs application in relation to Appeal Ref: APP/B4215/C/21/3267419 19 Devon Avenue, Manchester M19 2JH

- 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 Mr Nasir Iqbal for a partial award of costs against Manchester City Council.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a front porch and canopy and a single storey extension at the side and rear.
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Decision

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

Reasons

2. The application is for a partial award of costs against the Council. 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.
3. The appellant submits that the Council have acted unreasonably both in respect of the appeal procedure and substantive matters at appeal. It is his view that the enforcement notice was poorly drafted, ambiguous, contradictory, and confused. Consequently, the appellant was unclear as to what he was expected to do. Furthermore, it is claimed that the Council failed to engage with the appellant to clarify the matters at appeal which required the appellant to introduce additional grounds of appeal in respect of the porch. The appellant considers that the Council's defence of those additional grounds was not supported with any clear evidence.
4. It can be seen by my decision that the appeal succeeded on grounds (c) and (d), in so far as they were pleaded in relation to the porch. I agree with the appellant that there was some ambiguity in the requirements of the notice as set out in paragraphs 5.1 and 5.2. During the appeal process and considering previous correspondence from the Council¹, the appellant sought to clarify those matters and in particular the requirements of the notice in respect of the porch.² On receipt of such clarification the appellant deemed it necessary to introduce grounds (c) and (d).

¹ Appendix 3, Appellant's Application for Costs.

² Appendix 2, Appellant's Application for Costs.

5. PPG advises that 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 accurate.³
6. In this case the Council did not dispute that the porch was in place prior to the construction of the canopy.⁴ Moreover, previous correspondence from the Council¹ had indicated that the porch could remain and only the canopy which had been constructed over it was required to be removed. Requirement 5.2 of the notice also indicated that the porch could remain, contradicting the requirements in paragraph 5.1.
7. I appreciate that the Council subsequently supported their case by arguing that the porch formed part of the building operations for the canopy. However, a proper investigation of the works would have clearly indicated that this was not the case. Indeed, the Council had previously acknowledged that to be their position when the initial notice was issued¹. A more diligent investigation would have avoided the need to include the porch within the notice and ensured that the notice was accurate and unambiguous. Subsequent effective engagement and acknowledgement of the ambiguity during the appeal process would have avoided the need for grounds (c) and (d) to be pleaded.
8. It should not have been necessary for the porch to have been included in the notice and for the appellant to have to address the issues in relation to its inclusion. Thus, some unnecessary expense as part of the appeal process has been incurred.

Conclusion

9. For the reasons given above I find that unreasonable behaviour resulting in unnecessary expense, as described in PPG has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Manchester City Council shall pay to Mr Nasir Iqbal, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to grounds (c) and (d); such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Manchester City Council, to whom, a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR

³ Paragraph: 048 Reference ID: 16-048-20140306.

⁴ Paragraph 6.5 LPA Final Statement of Case.