



Costs Decision

Hearing Held on 16 November 2021

Site visit made on 16 November 2021

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

an Inspector appointed by the Secretary of State

Decision date: 10 December 2021

Costs application in relation to Appeals Ref: APP/G5180/C/19/3231907 and APP/G5180/C/19/3231908

8 Austin Avenue, Bromley BR2 8AJ

- 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 Leslie Baker and Mrs Janet Baker for a full or a partial award of costs against the Council of the London Borough of Bromley.
 - The appeal was against an enforcement notice alleging the construction of a link extension between two outbuildings at the rear of the Land and the material change of use of the extended and combined current outbuilding into a self-contained unit of habitable accommodation.
 - This decision supersedes that issued on 24 August 2020.
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Decision

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

The submissions for Mr Leslie Baker and Mrs Janet Baker

2. The application was made in writing and is summarised below.
3. The Local Planning Authority has demonstrated unreasonable behaviour through (i) a failure to produce evidence to substantiate its case that the building fails to comply with the 'permitted development' tolerances by reason of its dimensions and in relation to its use; (ii) acting contrary to well established case law; (iii) refusing to entertain an application to alter the roof; (iv) not reviewing the case as part of on-going case management; (v) prolonging the matter by re-arguing hopeless matters a second time rather than withdrawing the notice. All of the above has led to wasted expense in pursuing the appeals.

The response by the Council of the London Borough of Bromley

4. The response was made orally at the Hearing, summarised below.
5. (i) and (ii) The appellants' plans submitted with application 17/01642 showed the eaves height to be 2.65 metres. This was why the Council maintained that the eaves height exceeded the permitted development tolerance of 2.5 metres. It is not unreasonable to rely on the appellants' own measurements. The question regarding the use of the outbuilding is one of fact and degree and the onus of proof lies with the appellants. The Council considered the evidence supplied, alongside that of a neighbour, and took account of what was observed during a site visit. The investigations were diligent and thorough.

6. (iii) The Council remains satisfied that its estoppel arguments are valid. These matters have never been addressed and the appellants have not provided legal submissions of their own. (iv) The Council was not unreasonable in refusing to entertain plans showing a larger and more intrusive version of the development enforced against. The fallback positions are not considered valid arguments since the Council considers none can succeed. (v) The previous decision was quashed on grounds of the change in procedure and because of the Inspector's reasoning. It was not suggested that the Council's case was hopelessly argued. The Council maintains the notice was clear. The operational development altered the appearance of the outbuildings and enabled a material change of use.

Reasons

7. 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.
8. As I have explained in my decision, the link extension cannot be considered to be permitted development, for several reasons. And, even if it were, the link extension is integral to the material change of use and the notice is correct to require its removal. I am aware that the height of the link extension was examined by the previous Inspector, in an attempt to narrow the matters of contention. Notwithstanding that Inspector's findings, it is clear that the Council made its assessment on the basis of the appellants' submitted plans, which is not unreasonable. Furthermore, a notice directed at an unauthorised material change of use may lawfully require reversion to the pre-change position, as well as the removal of integral operational development.
9. In terms of the use, the Council assessed the evidence available to form its opinion on how the outbuilding was being used and occupied. It was able to substantiate its case and caselaw was correctly applied. While I disagreed on the matter of estoppel, the arguments were not without foundation.
10. The Council was entitled to refuse to determine the application which sought to alter the roof. It is not apparent that the issues before me could have been narrowed as the Council has explained that the 'lesser steps' would not have been considered favourably in any event. The fallback positions were considered but the Council did not afford these arguments any weight for reasons which were clearly explained.
11. It is clear to me that the Council did review its case in considering and responding to further evidence, including additional written statements, and taking account of the High Court judgment. Ultimately, the Council was of a different opinion to the appellants and it was able to back up its position with sound and well-reasoned arguments.
12. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore

Inspector