



Costs Decision

Site visit made on 31 January 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

**Costs applications in relation to Appeal Refs: APP/A5270/C/20/3258722, APP/A5270/W/20/3259058, APP/A5270/W/21/3271435
Premises known as 15 Blakesley Avenue, Ealing, London W5 2DN**

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Sinan Artar for a full award of costs against the Council of the London Borough of Ealing.
 - The appeals were in connection with an enforcement notice alleging a rear extension and basement extension as well as against the refusal of planning permission and non-determination of a planning application.
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Decision

1. The applications for an award of costs are refused.

Reasons

2. The Planning Practice Guidance 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. In summary, the appellant contends that he was receptive to remedying the breach of planning control by means of a remedial scheme that would have been acceptable to the Council. The Council therefore should not have issued a notice and consequently he has incurred delays and the costs of pursuing the enforcement appeal. It therefore should have been held in abeyance as there was a voluntary route. The notice also cites no harm arising from the basement extension yet requires it to be filled in. It also does not take account that the garden was to be landscaped.
4. The Council has failed to respond to letters concerning the application and notice, which is considered to be unprecedented, and has since refused to withdraw the notice. Had the subsequent application been determined it would have been an opportunity to bring the cost, delay and stress to an end. The Council's own evidence demonstrates that the application should be approved.
5. The Council has been mistaken in its understanding that the only remedy available is to reverse all the works undertaken and has not properly assessed the schemes. The Council has also not adequately considered the expediency of enforcement action as it has failed in its duty to consider the appellant's human rights. The enforcement process is therefore disproportionate, ill-judged, unnecessary and unreasonable.

6. The Council also advanced Land Registry information that was manifestly inaccurate or untrue and has separately alleged that the property has been divided into two flats.
7. The Council's response is that planning permission was refused and it was also authorised that enforcement action be taken. As a result, it assessed the expediency and issued a notice. In consideration of human rights, the compliance period was subsequently extended in light of additional information that it received.
8. Whilst the Council did not withdraw the notice, that does not amount to procedural unreasonableness, and so cannot be a reason for a costs award.
9. The Council has properly assessed the scheme on the ground (a) appeal and has also addressed the proposed works under the ground (f) appeal. The Council has also since addressed the Land Registry point in a letter sent to the appellant. The appellant has failed to demonstrate that the Council has acted unreasonably or that any unreasonable behaviour directly caused the appellant to incur unnecessary or wasted expenses throughout the appeal process.
10. The appellant has therefore made costs applications on both procedural and substantive grounds. Whilst I disagreed with the Council, that was a matter of planning judgement, and the Council provided reasons for its position that did not amount to vague or generalised concerns. The Council has therefore been clear in its position concerning the planning merits of the developments as well as in response to the enforcement grounds pleaded, which in my view does not amount to unreasonable behaviour.
11. Whilst the Council could have engaged with the appellant more fully, and I therefore have sympathy with him in this regard, having refused a planning application it was not unreasonable for enforcement action to be taken. I am therefore not persuaded that a more diligent investigation could have avoided the need to issue a notice, given the Council's overall, and continuing, position. The enforcement notice was therefore not issued unnecessarily.
12. The Council's failure to respond to letters and its consideration of the expediency of taking enforcement action, and any errors that were perceived by the appellant in doing so, are not specific matters for me as they procedurally pre-date the appeal process. Having been the recipient of enforcement action the onus was then placed on the appellant to demonstrate his case during the appeal process.
13. It is unfortunate the Council did not determine a planning application, however, and has been confirmed in its statement, had it done so, it would have refused the application. Consequently, an appeal was always likely, and given the previous decision and enforcement action, the appellant was well placed to understand the likely objections that would then be raised.
14. As it will have been seen in my decision letter, I afforded only limited weight to a planning application that was awaiting formal determination.
15. The point concerning inaccurate Land Registry information does not go to the heart of the appeal proceedings, and I have very little evidence that costs flowed from this in any event. Finally, separate concerns regarding other alleged breaches of planning control do not fall to be considered for the purposes of these proceedings.

Conclusion

16. In full consideration of all the points raised by the appellant, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR