
Costs Decisions

Site visit made on 21 January 1900

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 07th March 2022

**Costs application in relation to Appeal Ref: APP/N5660/C/21/3272457
Ground Floor Unit (Right) (AKA Katakata), 132A Brixton Hill
London SW2 1RS**

- 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 Council of the London Borough of Lambeth for a full award of costs against Mr Francklin Evagle.
 - The appeal was against an enforcement notice alleging the erection of wooden structures to the front and rear of the building.
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- 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 Francklin Evagle for a full award of costs against Council of the London Borough of Lambeth.
 - The appeal was against an enforcement notice alleging the erection of wooden structures to the front and rear of the building.
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Decision

1. The application by the Council of the London Borough of Lambeth for an award of costs is refused.
2. The application by Mr Francklin Evagle for an award of costs is refused.

Reasons

3. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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.

Application for an award of costs by the Council

4. Although it does not say so in its submission, I have taken the application to be for a full award of costs.
5. The Council says that the Appellant's claim that the structures benefit from permitted development rights ('PD rights') in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO') was clearly not the case. It says that this was the case as the property

was not in a shop use that would have benefited from the PD rights that were claimed in the GPDO. It states that the appeal could have been avoided by following advice on the Internet, contacting the Council or employing a planning professional. There was no chance of success in the appeal; it was unreasonable behaviour and led to unnecessary expense.

6. In response, Francklin Evagle points to the email correspondence, in which he says the Council found the 'apron structure' to be PD.
7. The Council was correct in its assertion that the PD rights initially relied on by the Appellant, in his grounds of appeal, did not apply. The site was in use as a café and those rights only applied to shops.
8. However, it appears that this was an error. His statement of case referred to a reliance on PD rights in Part 4, Class DA of the GPDO. In respect of these he submitted an email sent to the Council on his behalf, and its reply. This email correspondence lies at the heart of the matter.
9. The Council provided a planning history for the site with its statement of case. This shows that no permission was granted for the erection of the buildings. For reasons that are not clear, Mr Evagle's notification under Class DA for the use of 132A Brixton Hill as a café and takeaway is not mentioned there. In that 'application' he referred to the erection of a 'gazebo' which would be used for the takeaway business.
10. The Council responded that the use was PD. However, it did not comment on the gazebo. It seems that, from this correspondence, Mr Evagle not only assumed that he had permission for the use, but also for the wooden structure he erected.
11. This assumption was wrong, but, in the absence of any comment to the contrary, understandable. Given the evidence of the Council's email, I can also understand why Mr Evagle felt that he had received permission for the wooden structure and pursued the appeal. Although I take the point made by the Council that he might have sought professional or Council assistance, the context of the timing of events has to be taken into account.
12. The Notice was issued during a national lockdown, decreed because of the Covid-19 pandemic. People, no doubt including Mr Evagle, were very concerned about their health and livelihoods and these issues were foremost in their minds. Furthermore, I am not sure just how easy it would have been to get professional help at that time. Given the complexities of cases like this, using the internet for guidance might actually have compounded his problems. These comments should not be read as a criticism of the timing of the Council's actions. They are simply made to contextualise Mr Evagle's actions.
13. In more normal times, his actions might have been considered to be unreasonable. However, given the circumstances prevailing at the time, I find that Mr Evagle did not act unreasonably in respect of the wooden structure to the front of the building.
14. In respect of the wooden structure at the rear of the building, Mr Evagle offered no case. He does not mention it in his grounds of appeal, and only tangentially in terms of the previous state of the garden in his later submissions. In the absence of a ground (a) appeal, I did not give any weight to what were, in any event, very brief arguments.

15. I have not taken his lack of arguments as an unreasonable action, but as an acceptance that he could not make a substantive ground (c) case on this structure.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Application for an award of costs by Mr Evagle

17. Mr Evagle's costs application was not set out clearly and separately from his other submissions. However, reading his submissions as a whole it is clear that he is making an application and I have taken this to be for full costs.
18. Little evidence has been given in support of his application. From a reading of all of his submissions, I take this to be based on his belief that the Council's email of the 8 July 2020 allowed for the erection of the wooden structure at the front of the building. This was, as I have determined in my appeal decision, mistaken.
19. For the reasons set out in my appeal decision letter, the Council's actions were correct and proportionate. It did not act unreasonably.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Roy Curnow

Inspector