



Costs Decision

Site visit made on 10 May 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Costs application in relation to Appeal Ref: APP/R5510/C/21/3282505 23 Cowley Crescent, Uxbridge, UB8 2HE

- 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 E E Smani Ltd for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against an enforcement notice alleging the development of a hip to gable roof enlargement and a rear dormer roof extension adjoined to a two storey rear extension.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably so as to cause another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹.
3. Paragraph 031 of the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal. The applicant sought a full award of their costs, on procedural as well as substantive grounds. Summarised, the applicant's reasons for seeking an award of their costs are that the roof works attacked by the enforcement notice had been undertaken lawfully following the issuing of an LDC by the Council. Combined with subsequently permitted extensions, the works were still permitted development. The information had been available to the Council to enable it to reach a similar conclusion and by not doing so, it had acted unreasonably.
4. The PPG at paragraph 048 makes it clear that in terms of the matters occurring prior to an enforcement appeal, a Council is at risk of an award of costs if it is concluded that the 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. At paragraph 049, the PPG advises that a Council risks an award of costs on substantive grounds where an application is unreasonably refused; this could equally be relevant to a Council deciding that it is expedient to issue an enforcement notice. Examples of

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

unreasonable behaviour with respect to the substance of the appeal in this paragraph include failing to produce evidence to substantiate reasons for refusal, making vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, not following well-established case law and not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management.

5. As far as I have been made aware, the Council submitted no statement of case to explain why the roof works were in breach of planning control and why enforcement action was expedient. There is also no officer report or explanation in the notice itself as to why the Council considered that the roof works were in breach. As a result, the reasons for the Council reaching the view that the roof works were in breach are unclear. Furthermore, had it been necessary to determine the deemed planning application arising from the ground (a) appeal, the Council offered no clear and convincing explanation as to why planning permission should not be granted for the roof works. The reasons for issuing the notice do not have any great evidential foundation nor do they bear detailed scrutiny.
6. Based on the information which would have been available prior to the issue of the notice and also having regard to established case law, for the Council to reach the view that the roof works were in breach of planning control was unjustified. The Council has then compounded this shortcoming by not advancing any detailed evidence to show why enforcing against the roof works to secure their removal was an expedient course of action. As a result, the Council has failed to substantiate its case at appeal. Further, when being faced with the prospect of defending an appeal the Council has not sought to review its case to determine whether the notice should be withdrawn.
7. Given all of the above factors, from both a procedural and substantive point of view the Council's actions in this appeal are materially similar to those examples of unreasonable behaviour in the PPG referred to above. Having regard also to the fact that the Council made no response to the costs application, by which some explanation of its actions might have been advanced, it is hard to draw any other conclusion.
8. Accordingly, the applicant has clearly been put to the unnecessary expense of pursuing an appeal to defend their position which, had the Council behaved reasonably, could in all likelihood have been avoided altogether.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full 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 the Council of the London Borough of Hillingdon shall pay to E E Smani Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR