



Costs Decision

Site visit made on 9 August 2022

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Costs application in relation to Appeal Ref: APP/M5450/C/21/3279000 Land at 59 Beverley Gardens, Stanmore HA7 2AP

- 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 Morgan Anamoah for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against an enforcement notice alleging without planning permission the unauthorised construction of a single and two storey side to rear extension; single storey rear extension, alterations to roof to form end gable and rear dormer and front porch.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably, and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the substance of the matter under appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both¹. The application was made in writing and therefore there is no need to rehearse the detailed points made.
4. The main thrust of the applicant's case is that procedurally there was; a lack of co-operation from the Council, delays in providing information or other failure to adhere to deadlines, the Council did not agree to factual matters and failed to provide relevant information within statutory time limits. He also considers that substantively the Council have; prevented or delayed development which should clearly be permitted, failed to produce evidence to substantiate the reason for issuing the enforcement notice and made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The applicant submitted the appeal against the issuing of the enforcement notice on the 14 July 2021. At section G of the appeal form, completed and submitted by the applicant's agent, details were provided as to whether the

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

appellant has applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice. The date of the relevant application and the Council's decision date were also completed, the latter date being 18 August 2020. On 15 July 2021 a letter was sent to the Council by the Planning Inspectorate requesting comments as to whether Regulation 9 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 as amended (the 2012 Fee Regulations) applied in this case. A response was requested by 22 July 2021. A reminder of the deadline for comments was sent to the Council on 20 July 2021. However, no response was received from the Council and on the 2 August 2021 the Planning Inspectorate, on behalf of the Secretary of State, set a date of 16 August 2021 for the payment of the fee for the deemed planning application which accompanied the ground (a) appeal. Within the explanatory notes appended to the enforcement notice it is stated that the total fee payable is $\pounds 206 \times 2 = \pounds 412$. The Council confirmed that the fee was paid on the 4 August 2021.

6. The applicant considers that he was left with no option other than to pay the fee to ensure that the appeal was '*up and running*' even though he believes an exemption under Regulation 9 of the 2012 Fee Regulations applies to this appeal. Email correspondence between the Council and the applicant's agent indicate that the Council had attempted to contact the agent by telephone, but the Council's email is not clear if the telephone calls were in regard to this specific matter. Whilst I can understand the applicant's frustration with the lack of response from the Council in relation to this matter he could have delayed paying the fee until closer to the set deadline and pursued the matter further with the Council. Moreover, I have no jurisdiction over whether Regulation 9 of the 2012 Fee Regulations applies to this appeal. Based on the limited evidence before me it would not be judicious to consider that the Council acted unreasonably in this respect.
7. The Council submitted a copy of its questionnaire and supporting documents on 3 September 2021 which was not within the deadline set within the start letter of the appeal. That deadline was 2 September 2021, and the Council did not supply a copy of those documents to the applicant until 17 September 2021. Moreover, it did not specifically state that the questionnaire and the supporting documents would form its case. The delay in supplying a copy of the documents to the applicant was unreasonable behaviour. However, the applicant was still able to submit his Statement of Case by the deadline of the 30 September 2021 and there was no overall delay to the appeal process. Furthermore, there is little evidence before me to demonstrate how that unreasonable behaviour has resulted in unnecessary or wasted expense for him.
8. The applicant considers that the Council failed to take into account the relevant planning history on this site. The Council's delegated enforcement report (E Report) states that the relevant planning history is attached in Appendix 2. That appendix is a list of applications with no analysis of how it is relevant to the case. However, the E Report goes on to state that the impact of the unauthorised development and the reasons for issuing the enforcement notice have been established in the Planning Officer's delegated report (P Report) associated with the planning application P/1745/20. Within the site description section of the P Report it states that permission was granted for a 2-storey wrap around extension, but the extensions as built are not in accordance with

the submitted plans. It also states that a Certificate of Lawful Development was granted for the loft conversion yet when combined with the extensions this would also be unauthorised. Whilst the development is analysed as a whole in the P Report, the planning history and the differences between what was granted planning permission and as it has been constructed are explained. As such it is apparent that the factual matters, that is the planning history, were taken into account when the enforcement notice was issued. I do not consider that the Council acted unreasonably in this respect.

9. The applicant considers that he has demonstrated that the development does not result in any conflict with any design, character or amenity policies and that the Council have not responded to his appeal statement. He also considers that the E Report does not contain an objective analysis of the development's impact, it does not make an assessment against development plan policies and no regard is given to material considerations. Therefore he considers that the Council clearly failed to substantiate the reasons for issuing the notice.
10. The Council did not submit a Statement of Case at the 6-week stage but the E Report was submitted with its Questionnaire. As stated previously, the E report cites the P Report with regard to the impact of the unauthorised development and the reasons for issuing the enforcement notice. Therefore, even though the E Report contains minimal analysis of the impact of the development, development plan policies and material considerations it does refer to the P Report (cited as Appendix 4). The P Report includes an analysis of the principle of development, the effect on character and appearance and residential amenity. The planning application to retain the development as constructed was refused.
11. I have found within my substantive decision that the development does not result in a detrimental effect on the living conditions of the neighbouring occupiers with regard to visual impact. Nevertheless, the analysis of this issue was one which was a matter of judgment. Moreover, I have found that the development diminishes unacceptably the character and appearance of the host building with consequent harm to the character and appearance of the surrounding area. In addition, I have found that the ground (a) appeal and deemed planning application should not succeed.
12. The Council's submitted evidence supported the reasons for issuing the notice and I do not consider that the Council's evidence which explained the reasons for the Council's stance was materially deficient in its reasoning. Whilst I appreciate that the issuing of the notice will have been a disappointment to the applicant, the Council substantiated their position at the appeal stage by the submission of the E and P Reports. Consequently, I do not consider that the Council acted unreasonably in these regards.
13. Taking into account all of the above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D. Boffin

INSPECTOR