



Costs Decision

Site visit made on 31 August 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2022

Costs application in relation to Appeal Ref: APP/G5180/C/21/3278225 Land at 23 Lynwood Grove, Orpington BR6 0BD

- 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 Mrs Sue Huang for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against an enforcement notice alleging without planning permission, the construction of a single storey side extension on the north flank elevation of the host dwellinghouse and a first floor rear extension that has not been built in accordance with the approved plans, the eaves exceeding the height of the eaves of the host dwelling.
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Decision

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

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 and that behaviour has caused 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. Paragraph 031 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.
3. An award of costs was sought on both procedural and substantive grounds. Summarised briefly, the applicant's case is that the Council's investigation prior to issuing the enforcement notice was at fault, as they did not visit the appeal property and take measurements, nor did they serve a Planning Contravention Notice (PCN). The notice contained significant errors. After the appeal was made, the Council sought to make changes to the wording and scope of the notice without offering a proper explanation. Works at the property have had to cease to await the outcome of the appeal, delaying replacement of the original roof and leaving the dwelling vulnerable to water ingress.
4. Paragraph 047 of the PPG stresses that a Council should behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour where a Council may risk an award of costs being made in relation to the appeal procedures can include providing information that is shown to be manifestly inaccurate or untrue. Paragraph 048 makes it clear that in terms of

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

matters occurring prior to an enforcement appeal, a Council is at risk of an award of costs if it is concluded that an 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.

5. As far as I have been made aware, the Council did not respond to the application. However, the Council's statement documented the considerable efforts they had made over a sustained period of time, to try and engage with the applicant and address the matters at issue before taking enforcement action. It showed that Council officers had tried to access the property on a number of occasions and resorted to visiting adjoining land to obtain the information they required in order to progress the investigation. Whilst as far as I am aware no measurements were taken, the Council was nevertheless able to make an informed assessment which led them to suspect that the single storey side extension and first floor rear extension were being erected in breach of planning control. Given the information already available to the Council, serving a PCN is unlikely to have made a significant difference to the outcome of their investigation or the drafting of the notice. In any event, as pointed out in the PPG 'Enforcement and Post-Permission Matters' chapter, serving a PCN is a discretionary procedure-one does not have to be served before considering whether it is expedient to issue an enforcement notice. Consequently, I am satisfied that the Council's investigation reflected the proportionate approach to enforcement set out in paragraph 59 of the National Planning Policy Framework.
6. Although the notice contained some defects, these were minor; they were not fundamental to its validity. The corrections and variations suggested by the Council did not widen the scope of the notice. The notice was capable of being corrected and varied to address the defects without causing injustice to the applicant. The reasons for doing so did not require any detailed explanation, being largely self-evident. As a result, I am also satisfied that the Council's investigation exhibited the necessary level of diligence and has not resulted in significant inaccuracies in the notice or in their case at appeal.
7. The matters attacked by the notice do not relate directly to the rest of the property. The notice does not prevent works being undertaken at the rest of the property in accordance with the relevant planning permission. It is therefore unclear exactly why the applicant should have considered it necessary to cease all works, particularly those which might have secured the dwelling from the elements, pending the outcome of the appeal. It seems to me that any responsibility for such delays cannot be laid at the door of the Council.
8. Moreover, the Council supplied substantial and relevant evidence which supported its arguments in relation to the matters alleged in the notice as constituting a breach of planning control having occurred in fact, and that development has been undertaken without the required planning permission. The Council also produced evidence which in its view made the applicant's claim that the single storey side extension was immune from enforcement action less than probable. In reaching my own findings on the various grounds

of appeal, I largely shared the Council's conclusions. Consequently, the Council has substantiated its case at appeal.

9. Overall therefore, I find limited support for the application. In particular, there is little to suggest that the Council have acted in a manner similar to that described in the PPG as unreasonable behaviour prior to the issue of the notice, or in any way akin to the examples referred to above and other examples in the PPG concerning the appeal procedures and the substance of the matter at appeal, or that it has otherwise acted unreasonably. It follows that the conditions for an award of costs in the PPG paragraph 030 have not been met.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR