



Costs Decision

Site visit made on 7 February 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2023

Costs application in relation to Appeal Ref: APP/A5270/C/21/3291618 17 Highfield Road, Acton, London W3 0AJ

- 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 the Council of the London Borough of Ealing for a full award of costs against Mr Waleed Mohammed.
 - The appeal was against an enforcement notice alleging without planning permission the erection of a front and side boundary wall and gates.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG is clear that there is a right of appeal, and this is expressly reiterated in respect of enforcement notices. It continues by saying that the parties in appeals are normally expected to meet their own expenses. The PPG says costs may be awarded where a party has behaved unreasonably and it says unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues and examples are given.
4. The Council's application for costs relates to substantive matters, on the basis that the appellant made and pursued an appeal that had no reasonable prospect of success.
5. The appellant, despite references to the interpretation of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) did not make a case that the wall and gates constitute permitted development.
6. Their case was based on the view that a reference in a submitted planning statement¹ to a planning permission at 38 Lowfield Road, which included an allegedly similar boundary treatment, was sufficient to incorporate those details into the planning permission for 17 Highfield Road². As such the wall and gates have planning permission.

¹ Planning Statement prepared by MZA Planning (dated April 2020).

² 201444FUL

7. The appellant in his submissions and in his response to the Council's application for costs, maintained that in the Planning Statement, it is stated that the proposed boundary treatment is to be as 38 Lowfield Road. However, there is no such remark in the statement.
8. It was misleading of the appellant to refer to a remark which does not exist. However, despite being represented, it seems to me that the appellant believed that planning permission was granted for the wall and gates by virtue of reference to the permission at 38 Lowfield Road.
9. Accordingly, the appellant sought to exercise his right of appeal to protect his interest in the land and made a case, albeit to a large extent based upon planning merits, which in the absence of a ground (a) appeal had no relevance.
10. However, and whilst I reached a different conclusion to the appellant, it is not unreasonable for the appellant to have pursued an appeal in the context of their statutory right of appeal.

Conclusion

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

Felicity Thompson

INSPECTOR