
Costs Decision

Site visit made on 24 May 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Costs application in relation to Appeal Refs: APP/N5090/C/22/3300811 and APP/N5090/C/22/3300812

143 Edgwarebury Lane, Edgware HA8 8ND

- 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 and Mrs Schtraks for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging an unauthorised roof extension.
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Decision

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

The case for the appellants

2. The appellants in the substantive appeals, here the applicants for an award of costs, contend that costs should be awarded for several reasons, going both to the merits of the notice and the Council's conduct prior to issuing it.
3. It is claimed that the notice amounts to an abuse of process. It is said that the appeals are unnecessary because the notice should never have been issued, on the basis that with reasonable diligence the Council should have concluded that the development benefitted from permitted development rights, as confirmed by the grant of a lawful development certificate in 2019.
4. It is averred that the requirements of the notice are disproportionate and unreasonable, and that lesser steps (if any) should have been required. The allegation is described as 'generic' leaving the appellants uncertain as to precisely what was being alleged.
5. It is suggested that the notice was issued as a result of undue pressure having been brought to bear on the Council.
6. It is also suggested that the Council, through a period of silence over several years, had tacitly confirmed the lawfulness of the development. It is suggested that the so-called *Thrasylvoulou* principle applies, which is to say that the Council are precluded from issuing a notice for reasons of 'res judicata' or issue estoppel. Despite site visits to the property and other applications relating to the site having been reported to the Planning Committees of the Council, there was no suggestion in 2019 or in the three years before issuing the notice that there were any concerns about the lawfulness of the roof works. A false sense of security was thereby created.

The Council's Case

7. The Council say that the breach of planning control was correctly and adequately identified, including in prior correspondence with representatives understood to act on behalf of the property owner. The decision to issue the notice was subsequently reviewed. The Council acted reasonably.
8. As to the requirements, the Council cite the relevant sections of the 1990 Act and say that the requirements of the notice are commensurate with the allegation and the desired purpose of the notice. There is nothing inherently unreasonable about that.
9. As to the question of whether the Council are estopped from taking enforcement action, or are prevented from doing so because the matter has already been litigated, the Council cite extensive case law in support of their general contention that there has been no prior determination of the issue, and the Council have made no representations that could reasonably bind the Council as a matter of law.

Reasons

10. Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.
11. There is no express contention by the appellants that the Council have behaved unreasonably in the appeal process itself: rather, the general assertion is that the appeal was unnecessary because for various reasons the notice should never have been issued.
12. For the reasons set out in my substantive decision, the Council were correct to find a breach of planning control, and the appellants have not discharged the burden of proof to demonstrate that no such breach had taken place. Having found such a breach, the expediency of taking enforcement action was in the Council's discretion. No appeal on ground (a) was considered, which means I have not examined the Council's reasons for issuing the notice in any detail, but there appears nothing inherently unreasonable in either the allegation or the reasons for it.
13. As to the requirements of the notice as drafted, the appropriate approach to remedying a breach of planning control is (unless an extant permission exists, whereby the development could be altered so as to comply with it) usually to require the unauthorised development to be removed and the land restored to its former condition. Although in this case I have allowed the alternative solution of altering the development so as to comply with plans for which a lawful development certificate was previously issued, there is no unreasonableness in the Council's approach.

14. Much reference is made by the appellants to a series of site visits and Planning Committee deliberations concerning works to the property. I have seen no minutes of such meetings or visits suggesting that the notice was issued for anything other than proper reasons.
15. Nor have I seen anything to suggest that the appellants were given any reason by the Council (other than perhaps hope arising from a period of inaction) to give them succour as to the lawfulness of what had been constructed. The Council does not appear to have represented at any point that the roof construction was lawful, and certainly not by the obvious means of determining a lawful development certificate application made pursuant to section 191 of the 1990 Act concerning the lawfulness of existing development.
16. Whilst it may be regrettable that the Council did not issue a notice until some three years following completion of the roof works, those works plainly do not comply with the terms of the 2015 Order or with the plans certified as lawful proposed development in 2019 (or with the plans supplied at Exhibits 4 and 5 of the appellants' initial statement). There is no objective basis upon which to conclude that any representations have been made to the appellants upon which they can reasonably have relied to the contrary.
17. For these reasons I find there was no unreasonable behaviour by the Council warranting an award of costs, and the application is refused.

Laura Renaudon

INSPECTOR