



Costs Decision

Site visit made on 14 June 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2023

Costs application in relation to Appeal Ref: APP/H5960/C/21/3289693 142 Priory Lane, London SW15 5JP

- 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 Lavinia Jacobs for a full award of costs against London Borough of Wandsworth.
 - The appeal was against an enforcement notice alleging the unauthorised erection of ducting and associated works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG also confirms that costs applications may relate to events before the appeal but costs that are unrelated to the appeal are ineligible.
3. Planning permission was given for the dwelling at the appeal site on 23 October 2018. The dwelling was constructed by September 2020. I have determined in relation to the appeal on ground (c) that from the information provided to me, the ducting equipment installed did not comply with any details that had been previously approved. It is no surprise in such a situation that the Council would investigate the matter particularly as they had received complaints.
4. The Council contacted the applicant in correspondence dated 11 March 2021, initially giving no detail about their concerns. After that initial approach a site meeting took place as did other discussions and then on 19 March 2021, the Council Enforcement Officer asked in an email, for clear images of the "pipes" and a subsequent email on 26 March 2021 suggested that an application to regularise the changes should be submitted. The applicant responded on 19 April 2021 to confirm they would be submitting a retrospective application for the "ductwork".
5. An application to retain the ductwork was submitted on 13 May 2021. The Council had allowed for an application to be processed in an attempt to retain the ducting as constructed, rather than take enforcement action as soon as they suspected a breach of planning control had occurred. The application was refused on 17 August 2021. At this point, a way of challenging the Council's decision, would have been to appeal against the refusal.

6. The Council contacted the applicant by email on 6 September 2021 asking for confirmation of their intentions and the next day the applicant responded to explain that a pre-application process would be entered into. The applicant stated in an email of 8 November 2021, that they intended to keep the "channels of communication open".
7. The enforcement notice was then issued on 23 November 2021. It is not clear what reciprocation there had been by then from the Council regarding further pre-application discussions or whether the applicant had proposed details that would form part of those discussions. However, the Council is not required in guidance or legislation to hold-off from issuing an enforcement notice where a breach of planning control has been identified, to allow for further pre-application discussions. The Council's report of 17 August 2021 had considered the expediency of taking enforcement action. It is not clear why the prospect of such action would have been a surprise to the applicants given this.
8. Taking such action does not prevent meaningful discussions about an alternative solution whilst waiting for an enforcement notice to take effect. Furthermore, waiting for a pre-application process to conclude takes time. Even if a solution satisfactory to both main parties is found, securing those changes would presumably require a further planning application and then the implementation of that permission. There is nothing unreasonable in my opinion in the Council securing its position by taking enforcement action in these circumstances where they consider it expedient. As the applicants point out, taking enforcement action is discretionary. The PPG confirms that action should not generally be taken in the circumstances of a trivial or technical breach causing no material harm or solely to regularise the development should be avoided. However, given the position of the ducting equipment along with the sensitivity expressed by nearby neighbours, I consider that the Council acted reasonably in issuing a notice when they did. Had satisfactory pre-application discussions emerged which received planning permission, the Council would have the option to withdraw the notice or extend its compliance period to allow for their implementation.
9. The notice required the removal of the ducting that required planning permission. The notice then required compliance with what had been previously approved when the dwellinghouse itself was approved – which is a reasonable requirement. The applicants had the option of challenging the decisions of the Council to refuse the application to retain the ducting or, as they did, against the issuing of an enforcement notice, or both. Given the degree of dispute, an appeal always seemed likely in these circumstances.
10. I therefore consider that the Council acted reasonably in the events that led up to the issuing of the enforcement notice and within the appeal proceedings. The conditions for an award of costs have not been met.

Conclusion

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

Andy Harwood

INSPECTOR