



Costs Decision

Hearing held on 14 September 2023

Site visit made on 14 September 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 05 October 2023

Costs application in relation to Appeal A Ref: APP/U5360/C/22/3294804 1 Queensdown Road, Lower Clapton, London, E5 8NN

- 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 Newlon Housing Trust for a full award of costs against London Borough of Hackney.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a top floor extension.
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Decision

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

The Case for the Applicants

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.
3. Following a rather complex planning history, which is not relevant to the costs award, the appellant constructed an upper floor to No1 Queensdown Road without planning permission. An application to regularise the position was made and refused and subsequently appealed (3287454). After the appeal was lodged the Council issued an enforcement notice that resulted in the appeal referenced in the heading above. Both appeals were heard together at the Hearing on the 14 September.
4. The appellant argues it was unreasonable to issue the notice before the outcome of the s78 appeal was known. If that appeal was successful there would be no need for an enforcement notice at all, but as it was the notice only gave the appellant 6 months to carry out the requirements, and because of delays in the appeal system, the appellant would be left having to carry out the requirements of the notice before the s78 appeal was determined. Thus they were forced to appeal the notice as well so that the compliance period would be suspended until both appeals were determined. That meant also appealing ground (f) and (g) and getting advice on costs and timeframes for undertaking the works required by the notice, liaising with the Council and gathering evidence from Outward (the charity that houses the individuals in No1) as to the effects of complying with the notice on them.

The Case for the Council

5. The Council argue that it was purely a pragmatic decision on their part. The enforcement notice was likely to be appealed and so both appeals could be run

together and all the issues dealt with at the same time. This actually saved costs as otherwise there would have been two appeals to deal with. Also waiting to serve the notice would simply have dragged out the process and all the while there would have been uncertainty for the appellant and the harm identified would remain. Finally the appointment of experts to advise on costs and timeframes was premature and was not necessary until after the outcome of the enforcement appeal was known.

Reasons

6. Consideration of this costs claim is coloured by the fact the appellants were successful in their appeal and would have been had I only been dealing with the s78 appeal, so it is correct that the enforcement notice appeal was not necessary. However, that is only with the benefit of hindsight. The Council were entitled to assume their refusal was well founded and so would succeed in the s78 appeal. That would have made an enforcement notice inevitable, and it would likely have been appealed, not least to deal with ground (f) arguments.
7. Whatever the outcome I do not consider a full award would have been merited as the ground (a) arguments were the same as for the s78 appeal. I am also pretty sure the arguments concerning the impacts on the vulnerable residents would have been raised at the s78 Hearing as that would have to have been weighed in the balance if harm was found to the character and appearance of the area or the setting of the listed building. I also agree with the Council that the costs of reworking the roof to return to the permitted mansard were not relevant to the enforcement appeal. The fact that carrying out the requirements would be expensive is not usually an argument that carries any weight. The loss of the grant aid, which was an integral part of both appeals and a driver of the unlawful roof extension is a different matter, but that was dealt with in a paragraph in the evidence from the appellant themselves.
8. Thus while I can see the point the appellant is making, the enforcement notice appeal was, it turns out, a waste of time, it was not unreasonable for the Council to issue the notice in the first place. Indeed it is pretty normal practice for a lot of Councils to follow up a refusal of a retrospective planning permission with an enforcement notice. I do not think costs were affected by delaying the issue of the notice, the end result of two conjoined appeals was the same.
9. I should also mention the letter from the Council's officer that said "*I am fully aware that usually formal enforcement action would ensure once the appeal process has concluded*". Firstly I am not sure that is actually correct, but secondly it is a truism that the Council are not bound by off the cuff remarks made by officers and in any event the officer was just saying that it was usual to wait, not that it was unreasonable not to.
10. Taking all this together I do not consider the Council have acted unreasonably in issuing an enforcement notice and an award of costs, of any amount, is not justified.

Simon Hand

INSPECTOR