



Costs Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2023

Costs application in relation to Appeal Ref: APP/U5360/C/22/3302746 74 Linthorpe Road, Hackney, London N16 5RF

- 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 Hackney for a partial award of costs against Mr Pinnchas Deutsch.
 - The appeal was against an enforcement notice alleging operational development consisting of the erection of an elevated walkway, a part single, part two storey rear extension, an outrigger roof extension and alterations to the front elevation.
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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.
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 appeals on ground (b) and (c) that had no reasonable prospect of success.
5. The appellant's case on ground (b) related to both the alleged increase in height of the bay window and the enlargement of the dormer. In respect of the alleged enlargement of the dormer, the Council acknowledged at the Hearing that this had not occurred, therefore it was not unreasonable for the appellant to have made an appeal in this respect.
6. The appellant did not dispute that the bay window had been altered, their case was that the Notice incorrectly described such alterations. At the Hearing there was discussion about how the allegation could be corrected however, the appellant was unable to suggest how. Although unhelpful, it was not unreasonable to attempt to make this case.

7. It is neither unusual nor unreasonable for an appellant to make an appeal on ground (c) in the event that an appeal on ground (b) is unsuccessful. In any case, the appeal on ground (b) related only to the dormer and bay window, on which there was partial success, whereas the ground (c) related to all the works to the front elevation.
8. The appellant sought to exercise his right of appeal to protect his interest in the land and made a case that the works to the front elevation constituted permitted development by virtue of Article 3 Schedule 2 Part 1 Class A of The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended).
9. 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.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Felicity Thompson

INSPECTOR