



Costs Decision

Site visit made on 31 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 28 November 2023

Costs application in relation to Appeal Ref: APP/U5360/C/22/3304992 94 Manor Road, Hackney, London N16 5BN

- 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 London Borough of Hackney for a full award of costs against Mr Shalom Canzee.
 - The appeal was against an enforcement notice alleging without planning permission, the creation of hardstanding to the front of the property.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal. The application for costs in this case relates to the merits of the appeal.
3. The Local Planning Authority (LPA) asserts that the appellant's appeal on grounds (b) and (f) had no reasonable prospect of succeeding based on the fact that they had not submitted any evidence to support their argument or lesser steps to remedy the breach. It was considered unreasonable for the appellant to continue to pursue the appeal when the evidence held by the LPA clearly demonstrated that a breach of planning had occurred. Through numerous site visits to the property by the Council's officer, aerial photographs and street view imagery, it was evident that, as seen during the visit on the 20 June 2022, the garden area to the front of the house was being excavated prior to it being covered with hardstanding.
4. Email correspondence with the appellant shows that he and his sons had been informed during a site visit on the same day that planning permission would be required, and that work should not proceed until a planning application had been submitted. However, regardless of the written and verbal communication, work proceeded with the appellant knowing that such development would be a breach of planning control.
5. In these circumstances, the LPA considers that the appeal had no reasonable prospect of success and was submitted entirely without merit. Unreasonable behaviour by the appellant is considered to have occurred and this is deemed

to have led to unnecessary and wasted expense. Therefore, the LPA considers that a full award of costs is justified.

6. In defence of the application for costs against the appellant, their agent considers the council has been unwilling to cooperate and discuss the matters and says that the appellant is vulnerable due to his age. However, there is no evidence to support this claim.
7. An appeal against an enforcement notice allows the appellant the opportunity to bring an appeal against various grounds. The appeal was submitted against ground (b) that the breach of planning control had not occurred and ground (f) that the requirements of the notice exceed what is necessary to remedy the breach.
8. In this case, the LPA had officially advised the appellant regarding the breach in planning control that was occurring at the time of the visit and the email informed the appellant that if work continued the LPA would consider serving an enforcement notice. The advice was patently ignored, and I consider that, with no evidence to support their case and no lesser steps suggested that would remedy the breach, the appeal was submitted without merit and any reasonable expectation of success.
9. Overall, I am satisfied that the LPA has incurred unnecessary or wasted expense on defending the notice as set out in my reasoning above. I therefore find that unreasonable behaviour, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Shalom Canzee shall pay to London Borough of Hackney, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mr Shalom Canzee, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

SA Hanson

INSPECTOR