



Costs Decision

Hearing held on 18 October 2023

Site visit made on 18 October 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Costs application in relation to Appeal Ref: APP/M5450/C/23/3316669 41 Argyle Road, Harrow HA2 7AL

- 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 Harrow for a partial award of costs against Mr & Mrs Bhavin Shah.
- The appeal was against an enforcement notice alleging (1) the unauthorised construction of a first floor side extension and (2) the unauthorised construction of a hip to gable and rear dormer roof extension.

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) advises¹ 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 explains² that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. Examples of this may include the appeal following a recent appeal decision in respect of the same, or a very similar, development on the same site where an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period.
4. The Council seeks an award of costs in respect of the appellants ground (a) appeal. The main thrust of the Council's costs claim is that the appeal was unreasonable as the development had been found to be unacceptable in a recent appeal decision, and that the alternative schemes proposed were not "part of the matters enforced against" meaning that the appeal was bound to fail. Consequently, the Council considers that the appellants should have instead sought an extension to the compliance period under ground (g) to allow sufficient time to seek permission for the alternative schemes, potentially avoiding the need for a hearing and the associated costs.
5. As can be seen in my appeal decision, I found that there had not been any material changes in circumstances since the previous appeal decision³ ("the

¹ PPG Paragraph: 030 Reference ID: 16-030-20140306

² PPG Paragraph: 053 Reference ID: 16-053-20140306

³ APP/M5450/D/22/3295890

2022 appeal decision"). Therefore, there was nothing that would lead me to reach a different conclusion to the previous Inspector in relation to the as built development. However, the ground (a) appeal did not solely seek planning permission for the as built development but was made in relation to a potential 'fallback' position, along with seeking planning permission for alternative schemes. The ground (a) appeal therefore differs from the previous appeal.

6. Although I acknowledge that a "fallback" position is referred to in paragraph 3 of the 2022 appeal decision, I consider that this does little other than reiterate that the hip-to-gable and rear dormer elements included in the 2018 Lawful Development Certificate⁴ could be permitted development if they were not built in conjunction with the first-floor side extension and other works.
7. Ultimately, I did not find that the appellants had sufficiently demonstrated that there was a realistic possibility that the fallback position would result in a similar development taking place to that which currently exists on site. Nevertheless, I do not consider that it was unreasonable for the appellants to pursue the potential fallback position further, and to do so, an appeal under ground (a) was necessary.
8. Similarly, although I found that the proposed alternative schemes⁵ submitted by the appellants did not form "part of the matters enforced against", this was a matter of planning judgement for the decision maker. The alternative schemes attempted to overcome what the appellants perceived to be the harm identified by the Inspector in the 2022 appeal decision. Particularly given the significant level of cost and disruption that would arise in the event of the enforcement notice being upheld, it was not unreasonable for the appellants to submit alternative schemes for consideration.
9. Furthermore, for the planning merits of those schemes to potentially be considered fully, an appeal under ground (a) was required. Given what was at stake for the appellants, I do not share the Council's view that this could have been sufficiently achieved via a ground (g) appeal only. I also acknowledge that, instead of submitting their appeal, the appellants could have submitted a request to the Council under s173A(1)(b) of the 1990 Act for the compliance period to be extended. However, they could not be certain that this request would have been accepted.
10. In view of the above, I conclude that the appellants right to appeal was exercised in a reasonable manner, and that the ground (a) appeal was a reasonable and necessary course of action for them to take.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR

⁴ Council Ref: P/2649/18

⁵ Proposed Option 01 and Proposed Option 02