



Costs Decision

Hearing held on 12 December 2023

Site visit made on 12 December 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Costs application in relation to Appeal Ref: APP/Y5420/C/22/3299403 The land and building(s) known as 20 Topsfield Parade, London N8 8PT

- 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 Mr Ebrahim Abbassian of Inspec Services Limited for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against an enforcement notice alleging without planning permission the installation of PVCu windows to the front elevation of the property at upper floor levels.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party 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 application was made orally at the Hearing. The applicant's application for costs relates to substantive matters and is made on the basis that the enforcement notice requirements were not correctly formulated, and costs were incurred making this case. Additionally, the Council's case changed, in that the Council accepted, at the Hearing, that the most they could require is the reinstatement of windows to match those pre-existing. Moreover, the applicant considers that this undermines the purpose of the notice, and in respect of ground (a) the Council does not have a case when comparing the effect of the new windows against the pre-existing. The applicant explained that they tried to raise these matters with the Council in around May 2022.
5. The Council responded that they only recently changed their position in respect of the requirements, based on an appeal decision they had become aware of. They stated that they would have changed their position sooner had they been provided with caselaw. However, they confirmed their view, that the

replacement windows are materially different to the pre-existing and that permission should be refused. Accordingly, whilst I appreciate the applicant's attempts to raise these matters with the Council, I cannot be certain that this would have resulted in the appeal being avoided.

6. The applicant's case in respect of the requirements was made on the basis that the notice was a nullity. As evident from my decision, I did not find the notice to be a nullity.
7. The enforcement notice did not require improvement works. At the Hearing, the Council agreed that the requirements should be varied to require replacement windows to match those pre-existing to be installed (the land to be restored to its former condition). However, it was not unreasonable for them to have formulated the requirements as they did, bearing in mind they provided three appeal decisions¹ concerning the installation of UPVC windows in buildings within conservation areas in the same borough, with requirements formulated in the same way, where the notices were upheld without variation to the requirements.
8. In respect of the appeal on ground (a) and the deemed planning application, the Council conceded that the windows should be compared to those pre-existing however, they maintained that there was still a case that permission should be refused. This decision is one which is a matter of judgement. Since I found the windows do not constitute development, I have not considered the ground (a) appeal, therefore I cannot conclude that it was unreasonable of the Council to conclude as they did.
9. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Felicity Thompson

INSPECTOR

¹ APP/Y5420/C/17/3175882, APP/Y5420/C/18/3199822, APP/Y5420/C/20/3249027