# Costs Decisions

Site visit made on 5 March 2024

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 March 2024**

**Costs applications in relation to Appeal Ref: APP/U5360/C/22/3312005**
**65 and 67 Ashtead Road, Hackney, London E5 9BJ**

- The applications are 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 applications are made by The Council of the London Borough of Hackney against Mr Moses Schwartz of Eveland Limited for a partial award of costs, and by Mr Moses Schwartz of Eveland Limited for a full award of costs against the Council of the London Borough of Hackney.
- The appeal was against an enforcement notice alleging the construction of a canopy across the first floor rear terrace.

## Procedural matters

1. The Council's application clearly relates solely to the appellant's behaviour in respect of the appeal on ground (c). Mr Schwartz's application suggests that it is against the costs involved in responding to the Council's costs application that he claims is unreasonable. However, he also suggest that the Council's consideration of the planning merits associated with the case are unreasonable so, for the avoidance of doubt, I have considered Mr Schwartz's application in respect of the full costs of the appeal.

## Decisions

2. The applications for an award of costs are both refused.

## Reasons

3. 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.

*The Council's application*

4. The Council suggests that the appellant's appeal on ground (c) was wholly without merit and stood no prospect of success.

5. Through their submissions, the appellant has clarified that the appeal on this ground relates only to the canopy at No 65, and while I have found that the matters alleged in the enforcement notice (the Notice) must be considered as a whole, the appellant's position is explained, as is the appellant's belief that No 65 should be considered a dwellinghouse. The evidence from both parties on this point is somewhat inconclusive, although ultimately, the answer to that question has not been determinative to the appeal.

6. Moreover, the appellant's main argument on ground (c) is that the canopy should be considered an alteration rather than an enlargement of the

dwellinghouse. While in an appeal on ground (c) the burden of proof lies with the appellant, and they have provided no substantive evidence to support their interpretation, if the matter were determinative it would have been necessary for me to exercise some judgement in assessing this. I, therefore, find that the appellant's ground (c) appeal was not wholly without merit.

7. Unreasonable behaviour on behalf of the appellant has not, therefore, been demonstrated.

*Mr Schwartz's application*

8. It was not known until after the Council had produced its appeal statement that the appellant's ground (c) appeal only related to No 65. Moreover, nothing in those submissions supports the appellant's assertion that the canopy should simply be classed as an alteration. Nor has it been set out how the canopy would comply with the limitations within the Town and Country Planning (General Permitted Development) Order 2015 as amended (the GPDO). Given that the burden of proof lies with the appellant, the submission is, therefore, poorly made. Therefore, I find that the Council's making of a costs application was not wholly without merit, even though, as noted above, I have found that unreasonable behaviour by the appellant has not been demonstrated.

9. The Council's submissions through the costs application about how the structure should be considered in respect of the GPDO are not central to their arguments as to why the canopy should not be found to be permitted development. Some new concepts are raised but, in the context of demonstrating shortcomings in the appellant's case, where the burden of proof is on the appellant, I do not find the submissions to amount to unreasonable behaviour.

10. In connection with the planning merits, it is clear from the Council's evidence that the personal circumstances and best interests of the child have been considered. The Council has not, therefore, failed to consider an important material consideration such that the Notice may never have been served and the costs of the appeal avoided. While it has been suggested that the Council has not engaged in discussions surrounding a possible alternative scheme, that in itself has not been shown to have resulted in wasted expense in the appeal process.

**Conclusion**

11. With regard to the above, unreasonable behaviour resulting in unnecessary or wasted expense on the part of either party has not occurred and an award of costs is not warranted. Both applications are, therefore, refused.

*M Bale*

INSPECTOR