



Costs Decision

Site visit made on 5 March 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Costs application in relation to Appeal Ref: APP/B5480/C/22/3302439 Land known as 10 Victory Road, Rainham RM13 7RS

- 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 Elez Imeri for a full award of costs against the Council of the London Borough of Havering.
 - The appeal was against an enforcement notice alleging the construction of an outbuilding in the rear garden.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, paragraph 030 of the Planning Practice Guidance on Appeals (the 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 costs applicant points to the matters he has raised in his grounds of appeal with regard to compliance with section 173(10) of The Town and Country Planning Act 1990 as amended (the 1990 Act) and to the service of the enforcement notice. I have concluded that, even if the copies of the notice served were not accompanied with the necessary additional information¹, this has not rendered the notice a nullity. Similarly, I have concluded that the appeal on ground (e) should fail and that copies of the enforcement notice were served in accordance with section 172 of the 1990 Act. For these reasons, I cannot conclude that the Council has behaved unreasonably.
4. In my decision I also find that the matter of whether or not the Council had the correct authority to issue the notice is outside the remit of the appeal. As such, I am also unable to find unreasonable behaviour in this regard.
5. The applicant refers to the defects of the notice, in particular those in the allegation. On this matter, I have agreed with the applicant and concluded that the matters alleged in the notice have not occurred. As such, I am mindful of the advice at paragraph 048 of the PPG, which states:

‘For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that

¹ Including information as to the right of appeal under section 174 of the 1990 Act and the information sheet referred to in the Planning Practice Guidance document on Enforcement and post-permission matters

would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.'

6. I note the applicant's reference to the aerial imagery, which shows an outbuilding of some form on this site as far back as 2005. However, having viewed the building from the garden of the appeal site, I can see that the works to extend the outbuilding are not obvious. When viewed from the garden, the works that have been carried out to the building give it the appearance of an entirely new building. Furthermore, I note that the planning application, Council reference P0175.22, sought permission for the retention of the outbuilding. In view of this, I have some sympathy with the Council's case, which is that it was reasonable to conclude that the building had been completely replaced.
7. However, having inspected the building from the side and rear, the elements of the original building are more prominent. Indeed, the works to extend the building are more obvious on the side, north-east facing elevation which I could see from the land to the rear of the site. I could see a distinct change in brickwork and mortar, which corresponds to the extended section. In addition to this, the plans submitted with the P0175.22 planning application are clearly annotated to indicate the footprint of the extension and state that this is a 'proposed area added to the existing outbuilding'.
8. I acknowledge that the allegation of the construction of an outbuilding might still have been correct, even if elements of the original outbuilding had been used in its construction. In these circumstances, whether or not a building is new development is a matter of fact and degree. However, the Council do not make the case that a new building has been constructed, despite elements of the original outbuilding having been retained. It has simply conceded that the allegation in the notice is not correct, and that it should allege 'extensions and alterations to a rear outbuilding'. I have been given no reason to disagree with this.
9. I can commend the Council for reviewing its position, having considered the applicant's grounds of appeal. However, the evidence which has caused the Council to change its position (which includes the plan accompanying the P0175.22 planning application and the building itself, as I observed it), would have been before the Council at the time of drafting the notice. Had it considered all the relevant information that was available at the time, and carried out a more diligent investigation, the Council would not have had reasonable grounds to issue a notice alleging the construction of an outbuilding. In view of this, I can only conclude that the Council have behaved unreasonably in issuing the enforcement notice that is the subject of the appeal.
10. Had I been able to correct the notice and consider the remaining grounds of appeal, I might have concluded that the unnecessary or wasted expense in the appeal process would have been limited to the aspects of the applicant's case that dealt with his ground (b) appeal. However, I have not been able to correct the notice, not least because of the uncertainty as to what the notice should allege. The Council's response to the ground (b) appeal in this regard was of limited assistance, particularly in identifying the extent of the works of alteration and extension to the building. Furthermore, matters were not helped by the suggestion that the development includes 'a separate self-contained

residential dwelling', without providing sufficient evidence to show that the building had been used in that way. The Council also failed to consider the consequences of any corrections to the allegation for the requirements of the notice.

11. I acknowledge that, even if the notice had been accurate, an appeal may not have been avoided. However, it is likely that the applicant would have approached such an appeal in a way that is different to his approach to this appeal. Indeed, such an appeal might still take place in the future if, following my decision, the Council decide that it is expedient to issue a further notice. It is, however, the cost of making the appeal that was before me that I find to be an unnecessary or wasted expense.
12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is, therefore, warranted.

Costs Order

13. 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 the Council of the London Borough of Havering shall pay to Mr Elez Imeri, 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.
14. The applicant is now invited to submit to the Council of the London Borough of Havering, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR