



Costs Decisions

Site visit made on 15 July 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26TH JULY 2024

Costs applications in relation to Appeal Ref: APP/H5960/C/23/3329230 50 Maskelyne Close, London SW11 4AE

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Ms Teodora Damilovic for a full award of costs against the Council of the London Borough of Wandsworth. Application B is made by the London Borough of Wandsworth for a full award of costs against Ms Teodora Damilovic.
 - The appeal was against an enforcement notice alleging without planning permission and within the last four years, the unauthorised erection of a single storey rear extension at the property.
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Decisions

Application A

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

Application B

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

Reasons

3. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

Application A

4. The costs application is made by applicant A on the basis that (i) the enforcement notice was defective, and (ii) that the Council does not have an existing development plan policy that support the consideration of the fire safety aspects of a single storey rear extension and, furthermore, the notice does not refer to any such alleged policy.
5. I have concluded in my enforcement appeal decision that the notice was not defective and, in this regard, that the requirements of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations) have been met. In this regard, the Council did not display unreasonable behaviour, and the appellant was not put to wasted time and expense in pursuing the appeal.

6. While it is acknowledged that the notice does not refer to policy D12 of the London Plan 2021, it was explicitly referenced in the enforcement report considered by the Council's Planning Committee on 18 July 2023. The evidence is that the appellant was aware of the Council's Planning Committee report as she refers to it in a letter of complaint sent to the Planning Inspectorate on 9 December 2023. This post-dates the lodging of the appeal which was on 9 September 2023.
7. The claim made by the appellant that the Council's fire safety reason for issuing the notice has not been substantiated is not well founded. The evidence is that there is a fire safety policy which forms part of the development plan for the area. In respect of this matter, the Council has not behaved unreasonably, and the appellant has not been put to wasted time and expense in pursuing the appeal.
8. For the above reasons, I conclude that an award of costs is not justified.

Application B

9. The Council's claim for a full award of costs is that no valid evidence has been submitted to support the claims made as part of the appeal and that as the property does not have permitted development rights (i.e., rear extensions), it was unreasonable for the appellant to have referred to this matter as a fallback position.
10. In respect of the ground (a) appeal, while I have not agreed with the appellant in terms of the effect of the development on the character and appearance of the area and the living conditions of the occupiers of the neighbouring property, these are essentially matters of subjective planning judgement. In this regard, I am satisfied that the appellant has reasonably substantiated comments made in respect of the ground (a) appeal. However, I do not find that the comments made by the appellant in respect of fire safety were reasonably substantiated. I accept that policy D12 of the LP was not listed in the notice, but this did not constitute a defect in terms of the Act or the Regulations.
11. In respect of permitted development rights, the appellant acknowledges that the appeal property is not a dwellinghouse. I am satisfied that the point being made by the appellant was simply that similar development would benefit from permitted development rights were it not built in association with a maisonette. In respect of the erection of a fence and permitted development rights, it was reasonable for the appellant to have referred to this as part of her ground (a) appeal case.
12. Given the appellant's complaint letter of 9 December 2023, I find that the evidence indicates that the appellant was aware of policy D12 of the LP at this time. I find that the appellant should have reviewed her position at this point in respect of fire safety issue and communicated matters to both the Council and the Planning Inspectorate. She did not do this. Therefore, I conclude that the appellant displayed unreasonable behaviour resulting in the Council wasting time and expense in preparing for and responding to the fire safety main issue from 9 December 2023.
13. In respect of the ground (b) appeal, the appellant did not provide any evidence to support the contention that the matters comprising the alleged breach of

planning control had not occurred. In fact, the appellant's statement of case showed the opposite. In this regard, unreasonable behaviour has been demonstrated and the Council has been put to wasted time and expense in preparing for and responding to the ground (b) appeal.

14. The appellant unreasonably used the ground (b) appeal to attack alleged defects in the notice. In this regard, the appellant also displayed unreasonably behaviour. The appellant, who was professionally represented, did not have regard to the Act or the Regulations in this regard. Therefore, the Council was put to wasted time and expense in preparing for and responding to such matters.

15. For the above reasons, I conclude that a partial award of costs is justified.

Costs Order (Application B)

16. 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 Ms Teodora Damilovic shall pay to the London Borough of Wandsworth the partial costs of the appeal proceedings described in the heading of these decisions and limited to matters relating to preparing for and responding to the ground (a) appeal (fire safety issues only and from 9 December 2023) and the ground (b) appeal (including alleged enforcement notice defects); such costs to be assessed in the Senior Courts Costs Centre if not agreed.

17. The London Borough of Wandsworth is now invited to submit to Ms Teodora Damilovic, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Hartley

INSPECTOR