



Costs Decision

Site visit made on 18 September 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th OCTOBER 2024

Costs application in relation to Appeal Ref: APP/N5090/C/23/3319939 32 Colenso Drive, Mill Hill, London, NW7 2EB

- 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 Mrs Rachel Dalton for an award of costs against the Council of the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging without planning permission, the construction of a rear dormer window.
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Decision

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

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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the merits of the appeal.
4. Paragraph 59 of the National Planning Policy Framework (the Framework) states that effective enforcement is important to maintain public confidence in the planning system. In that regard, I understand the Council's concern that for it to provide an effective enforcement service, it cannot operate in an environment where costs claims, and awards are made on tenuous grounds.
5. Nevertheless, paragraph 59 of the Framework also explains that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.
6. When considering whether enforcement action should be taken, the PPG refers², amongst other things, to a clear public interest in enforcing planning law and planning regulation in a proportionate way. It advises³ that local planning authorities should usually avoid taking formal enforcement action where there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area and where development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development.

¹ Paragraph: 028 Reference ID: 16-028-20140306

² Paragraph: 003 Reference ID: 17b-003-20140306

³ Paragraph: 011 Reference ID: 17b-011-20140306

7. The reason for issuing the enforcement notice states that the 'rear dormer development, by virtue of its size and prominence, visually fails to respect the established pattern of development, to the detriment of the character and appearance of the host property and surrounding area', contrary to the development plan policies and supplementary planning document cited.
8. As the appeal was not made under ground (a), I have not considered the planning merits of the dormer. Nevertheless, the requirements of the enforcement notice include the option to reduce its size to accord with approved plan number D08 REV1 of planning permission 22/5380/HSE.
9. In that regard, I have found that the difference between what has been built and what was approved to be de minimis. It is not unreasonable to deduce therefore, that no material harm to the character and appearance of the area has arisen, above that which has already been granted planning permission.
10. Although, as explained in my appeal decision, it could be reasonably argued that there was a technical breach of Condition 1, the appellant has demonstrated that it was not material and that the dormer falls within the scope of the planning permission granted.
11. The Council seeks to highlight that the 'area for Colenso Drive has had its permitted development rights suspended' to ensure that development is sanctioned by it 'to uphold the heritage of the area'. It explains that as being the reason for objecting to the as built dormer.
12. However, whilst the merits or otherwise of removing permitted development rights are beyond the scope of the appeal and costs application, the character of the area, including the appeal site, is clearly that of a modern residential estate.
13. Although I appreciate that the Council is obliged to uphold the standards of development for the appeal site and its locality, it did, nonetheless, grant planning permission for a dormer, which is not materially different to that built. Such small differences are unlikely to set a precedent whereby it would completely destroy the Council's ability to govern development growth, or to be 'unable to contain the established heritage for the area surrounding the appeal site', as suggested.
14. Accordingly, the Council acted in an unreasonable and disproportionate manner and should have avoided taking formal enforcement action for such a trivial technical breach of control.
15. The PPG advises⁴ that for enforcement action, local planning authorities must carry out adequate prior investigation, stating 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 would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
16. The Council asserts that it conducted an appropriate enforcement investigation for what amounts to a straightforward case. Indeed, it states that very little investigation was required as the dormer had been judged as being in excess of its planning permission by the officer who had signed off its approval.

⁴ Paragraph: 048 Reference ID: 16-048-20140306

17. However, the appellant states that the Council was unwilling to attend the site for an external investigation of the property dimensions and insisted the only way she could prove that there was not a breach was to take the measurements herself. She states that was undertaken and demonstrated by means of a video to prove authenticity of the measurements taken. Although, on review of the images and videos, the Council judged the dormer to be 70cm too high and wide, it is not explained how it arrived at that judgement and no dimensions have been submitted other than those provided by the appellant.
18. The Council does, in an email to the appellant, refer to its officer report for the planning approval which states that the dormer would measure 2.2m in depth, 2.5m in width and 1.7m in height. However, there are no dimensions specified on the approved plan, and any measurements taken by scaling from it, may not be accurate. What is shown on the plan is that the dormer would be half the width and half the depth of the rear roof pitch. In that regard the appellant has demonstrated, on the balance of probabilities, that the resultant deviation is de minimis.
19. The Council asserts that it consented to a request for a site visit and that an internal inspection of the dormer was carried out. Despite acknowledging the interior of the dormer was not in question (and was found to be lawful), the Council argues that there was no need for an external inspection as the dormer had already been judged to be in excess of its planning consent.
20. Nevertheless, the appellant legitimately raises the question why an investigation of the internal dormer was made at all, given that scaffolding was in place on the day the site investigation took place, and that the enforcement officer was invited to measure the dormer externally. Doing so would clearly have offered the Council opportunity to agree the dimensions with the appellant, or at least to provide dimensions of its own, rather than rely on a visual judgement.
21. To that end, the Council seeks to draw my attention to a comparison of the approved plan D08 REV 1 and a photograph taken by its officers, which it argues as demonstrating that the dormer as built is far more prominent on the rear roof slope than depicted. However, as set out in my appeal decision, it is not a like for like comparison. The drawing shows the rear of the property in elevation, whereas the photograph is taken to the side, at ground level.
22. The Council has provided an image of an email dated 13 February 2023 in which its enforcement officer refers to the appellant indicating that she did not intend on reducing the size of the dormer for reasons discussed at the site inspection. The Council further state that the appellant's response was not to argue to the contrary, but to confirm that any subsequent enforcement notice would be appealed against (acknowledging her right to do so). The Council says it was left with no alternative other than to serve the notice.
23. However, the appellant has provided a transcript of her husband's email response from 17 February, which refers to evidence being provided on two separate occasions that the dimensions of that constructed met the planning permission conditions, and that during the site visit, it was mutually agreed and recorded that no violations were observed.
24. The transcript also states that the Council had not provided any evidence or results of any investigation to support their claim of a breach. Reference is

made to repeated requests for clarification on the alleged breach so that remedial actions could be prepared, but that the Council had not been forthcoming with any details.

25. In the circumstances, I find that the Council did not take the opportunity to carry out adequate prior investigation before to issuing the enforcement notice. In the absence of agreed dimensions, or evidence which contradicts the dimensions submitted by the appellant, I have found the differences between what was approved and that which has been built to be de minimis. A more diligent investigation may also have confirmed the appellant's measurements thereby avoiding the need to serve the notice in the first place, and the appeal against the same.
26. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Other Matters

27. I have noted the discussions around whether the Council does or does not promote planning professionals by name (planning agents), but such matters have little relevance to this costs application.

Costs Order

28. 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 Barnet shall pay to Mrs Rachel Dalton, 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.
29. The applicant is now invited to submit to the Council of the London Borough of Barnet, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Richard S Jones

INSPECTOR