



Costs Decision

Site visit made on 5 December 2024

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Costs application in relation to Appeal Refs: APP/C5690/C/23/3326799 & 3326800 83 Arbuthnot Road, London SE14 5NP

- 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 Dr Mike Firth and Dr Lynette McKenzie for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeals were against an enforcement notice alleging the unauthorised enlargement to the rear of the property without planning permission.
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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. Unreasonable behaviour by a Local Planning Authority can either be procedural² – relating to the process, or substantive³ – relating to issues arising from the merits of the appeal.
3. The PPG gives a non-exhaustive list of examples of unreasonable behaviour which may give rise to a procedural award against a local planning authority. This includes “*failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined*”, and “*delay in providing information or other failure to adhere to deadlines*”. In terms of examples of unreasonable behaviour which may give rise to a substantive award against a local planning authority, the list of examples includes “*failure to produce evidence to substantiate each reason for refusal on appeal*”.
4. The applicants contend that the Council has acted unreasonably in relation to both procedural and substantive matters. In particular the applicants consider that the Council has:
 - Failed to meet PINS deadlines
 - Failed to respond to the appellants grounds of appeal
 - Issued a notice despite planning permission existing for the works
 - Failed to substantiate its reasons for issuing the notice.

¹ PPG Paragraph: 030 Reference ID: 16-030-20140306

² PPG Paragraph: 047 Reference ID: 16-047-20140306

³ PPG Paragraph: 049 Reference ID: 16-049-20140306

5. In terms of the failure of the Council to meet PINS deadlines, this relates to the Council not providing a statement of case at the six-week stage. Consequently, the applicants contend that they have had to prepare their case “in the dark” and that the Council has not provided any “justification for their position”.
6. In some circumstances the failure of a Council to submit a statement of case as part of the appeal proceedings may not result in the appellant being disadvantaged in any way. For example, if the alleged breach of planning control and the requirements of an enforcement notice are clear, the reasons for issuing that notice are detailed and precise, and if an officer’s report or delegated report explicitly sets out the Council’s position and any perceived planning harm, then an appellant would likely be fully aware of the Council’s concerns and perfectly capable of preparing their case accordingly.
7. However, that is not the case in this instance. As can be seen from the appeal decision, I found the enforcement notice to be vague and unclear and that it did not clearly inform the recipients what the breach of planning control is, and what must be done to remedy it. The “Planning Enforcement Report” was similarly lacking in detail and failed to sufficiently set out the Council’s position. Given the above, a detailed statement of case was essential for the Council to substantiate its reasons for issuing the notice.
8. The Council’s failure to provide a statement of case merely compounded its shortcomings in terms of the notice failing to accurately specify the breach or provide sufficiently clear reasons for issuing the notice. Had it been necessary to determine the deemed planning application arising from the ground (a) appeal, the Council offered no clear and convincing explanation of what harm was caused by the development and why planning permission should not be granted.
9. A further consequence of the failure to provide a statement of case is that the Council has not responded to the appellants grounds of appeal. In addition to the planning merits that would be discussed under the ground (a) appeal, appeals were also made under grounds (c) and (f). The appeal under ground (c) essentially argued that the works carried out on site benefitted from planning permission whereas, the appeal on ground (f) provided alternative schemes which the appellants considered would overcome any planning harm. The lack of any response means the Council has not provided any detailed analysis of why, in their opinion, the works did not benefit from planning permission, or why the alternative schemes would not have overcome any identified planning harm.
10. The failure of the Council to properly set out and then subsequently support its case is, in my view, a clear example of unreasonable behaviour. The actions of the Council have resulted in the enforcement notice being quashed without the issues on appeal being determined. From both a procedural and substantive point of view the Council’s actions in this appeal are materially similar to those examples of unreasonable behaviour in the PPG referred to above.
11. Having regard also to the fact that the Council made no response to the costs application, by which some explanation of its actions might have been advanced, it is hard to draw any other conclusion.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 Lewisham shall pay to Dr Mike Firth and Dr Lynette McKenzie the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Office if not agreed.
14. The applicants are now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Jones

INSPECTOR