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## Costs Decision

Site visit made on 17 June 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 July 2025

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### **Costs application in relation to Appeal Ref: APP/A5270/C/23/3323558**

#### **7 Fisher Close, Greenford, Middlesex UB6 9UF**

- 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 the Council of the London Borough of Ealing for a partial award of costs against Mr Jacek Zywicki.
  - The appeal was against an enforcement notice alleging without planning permission the construction of a wraparound two storey side extension and part single, part two storey rear extension.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts<sup>1</sup>. Paragraph 031 advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The Council sought a partial award of their costs on substantive grounds, limited to the appeal made pursuant to grounds (a) and (c). The application was made in writing, in accordance with the PPG at paragraph 035. The Council's case in summary is that the enforcement notice provides the alternative of completing the development to accord with the 2019 planning permission. That being the case, the Council argued, if it had indeed been the appellant's intention to complete the development as permitted, appealing on grounds (a) and (c) was unnecessary and has resulted in wasted costs being incurred.
4. The PPG in paragraph 053 advises that the right of appeal should be exercised in a reasonable manner. An appellant risks an award of costs being made against them on substantive grounds where the appeal had no reasonable prospect of success. Some examples of unreasonable behaviour by an appellant relating to the substance of the case are set out in this paragraph but it is made clear that the list is not exhaustive.
5. Although professionally represented during the initial stages of the appeal, the appellant made no substantive response to the application for costs. The appellant's case on ground (c)-that the extensions benefitted from the 2019 planning permission-was nevertheless supported by a relatively clear explanation as to why they thought that was the case. Although the onus is on the appellant to show why a ground (c) appeal should succeed, a failure to discharge the burden of

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<sup>1</sup> *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

proof is not, in itself unreasonable. To reach a conclusion on this ground of appeal it was necessary to assess the available evidence, including that supplied on behalf of the appellant to support their case, in some detail. That there was a need to do so suggests that the ground (c) appeal had at least some evidential basis. Therefore, I cannot be certain that the appeal on this ground had little reasonable prospect of success.

6. Furthermore, although perhaps not clearly expressed in such terms, the ground (c) appeal and the references to similarity between the permitted and as built extensions also provides at least some of the basis for the ground (a) appeal. After all, by arguing that there is little material difference between the permitted and as built extensions it is possible to infer that there are similar planning consequences. Development Plan policy, along with the Council's Supplementary Planning Document 4-Residential Extensions document, are not particularly prescriptive and largely provide for the exercise of judgement when assessing the planning merits of residential extensions. Accordingly, I also cannot be certain that the ground (a) appeal had little reasonable prospect of success.
7. Drawing these matters together, in my view the appellant has been able to substantiate their case in relation to grounds (a) and (c) at the appeal. As a result, the Council has not been put to the unnecessary additional expense of preparing the written evidence to defend the appeal made on those grounds. It follows that the conditions for an award of costs in the PPG at paragraph 030 have not been met.

### **Conclusion**

8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*Stephen Hawkins*

INSPECTOR