

Costs & Decisions Team

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Chris Sawden
ALP Planning Services Ltd

Your Ref:

Our Ref: APP/R5510/C/18/3206769

Date: 20 April 2020

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 AND 322
LAND AT 9 ANGUS DRIVE, RUISLIP, HA4 0RZ
APPEAL BY MRS ROSHAN VERSI: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's letter of 23 September 2019. This confirmed the withdrawal of the enforcement notice dated 13 June 2018 issued by the London Borough of Hillingdon Council. The notice alleged a breach of planning control on land described above by:

"Without planning permission: the erection of a second generation single storey rear extension".

2. This letter deals with your application, on behalf of the appellant, for a full award of costs against the Council as made in written correspondence dated 21 October 2019. The Council replied on 20 March 2020 after there had been an initial delay by the Planning Inspectorate in forwarding the costs application to them. As these costs submissions have been made available to the parties it is not proposed to summarise them in detail. They have been carefully considered along with all the available evidence.

Summary of decision

3. The costs application succeeds to the extent that a partial award of costs is being made. The formal decision and costs order are set out in paragraphs 17 and 18 below.

Basis for determining the costs application

4. In enforcement notice appeals (as for appeals in general) the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State

to award appeal costs against any party which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of current Government guidance on awards of appeal costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. The guidance at paragraph 042 & 047 of the PPG is considered particularly relevant. The decisive issue is whether or not the combination of the Council's decision to issue the enforcement notice, and to subsequently withdraw it during the course of the appeal proceedings, amounts to unreasonable behaviour with the result that the appellant incurred wasted expense in the appeal process.

8. The sequence of events leading to the withdrawal of the enforcement notice has been carefully examined. The enforcement notice was issued by the Council on 13 June 2018 with an effective date of 16 July 2018. The enforcement notice appeal¹ was submitted to the Inspectorate on 10 July 2018. The Inspectorate's initial procedural letter of 29 August 2018 to the parties explained that the appeal was considered valid and indicated that a 'start date' letter would be issued in due course setting out details of the procedure and timetable for the appeal. On 18 March 2019, the Inspectorate issued a decision by a Planning Inspector on the appellant's related planning appeal (APP/R5510/D/18/3212962)² in respect of the development which had given rise to the enforcement notice. The appeal was allowed. On 12 August 2019 the Inspectorate issued start date letters for the enforcement appeal. The letters explained that the appeal would be decided via an exchange of written representations and a site visit by a Planning Inspector. A timetable was set for the submission of appeal documentation including (on 23 September 2019) statements of case. The Council submitted their questionnaire and supporting documentation for the appeal on 27 August 2019. In response to question 11 the Council confirmed that planning permission had previously been granted for the development the subject of the notice and a copy of the Planning Inspector's appeal decision was provided. The appellant's agent then wrote to the Inspectorate on 30 August 2019 seeking clarification as to whether the enforcement appeal should continue given that the Council had already granted planning permission for the development. The agent's email was passed to the Council by the Inspectorate on 16 September 2019 for comment. The reply of 20 September 2019 from the Council's Senior Planning Enforcement Officer stated:

"I write further to comments from Chris Sawden regarding ongoing enforcement appeal for 9 Angus Drive (ref: APP/R5510/C/18/3206769).

I can confirm that we agree with him that that matter has been dealt with by the earlier planning decision appeal (ref: APP/R5510/D/18/3212962) and as such we have now withdrawn the enforcement notice. I attach a copy of the withdrawal notice sent in the post on 19 September 2019. We expect the enforcement appeal to fall away."

The Inspectorate confirmed the withdrawal of the notice on 23 September 2019.

Conclusions

9. Before issuing an enforcement notice planning authorities are expected to be satisfied that they have reasonable grounds for concluding that there has been a breach of planning

¹ Appeal made on grounds (a), (d), (f) & (g) in section 174(2) of the 1990 Act (as amended)

² The planning application was refused by the Council on 10 July 2018 and appealed by the appellant on 1 October 2018

control and it is expedient to take such action because the breach would unacceptably affect public amenity or the existing use of the land and buildings meriting protection in the public interest.

10. You argue that the Council acted unreasonably in taking enforcement action in the first place. You claim that the Council produced no evidence to demonstrate that the breach occurred within the last 4 years. You say that there was aerial photographs available to the Council which showed that the extension had been in situ, for a period far in excess of 4 years. The Secretary of State takes the view that these would have been matters to have been considered by the Inspector if the enforcement appeal had proceeded to a decision. But since the enforcement notice, the subject of the costs application was withdrawn and the appeal not determined, the appellant's arguments in respect of her ground (d) appeal have not been considered in this particular case.

11. Nevertheless, while there was no formal determination of the enforcement notice appeal (because the notice was withdrawn), the Secretary of State takes the view that the decision on the planning appeal was relevant in the context of the enforcement notice appeal. The Planning Inspector's appeal decision noted that the Council's key concern with the development was its effect on the character of the host dwelling and the surrounding area and whether the annex was tantamount to a separate dwelling and its impact on existing dwellings, car parking and amenity space. The Inspector assessed the appeal development against the aims of the Development Plan policies and while the Inspector took a different view to the Council on the merits of the planning appeal an element of subjective judgement was required in reaching that decision and it does not necessarily follow that the Council acted unreasonably in deciding to issue the enforcement notice. The conclusion drawn is that the enforcement notice was issued in order to achieve a proper planning objective. The Secretary of State concludes that the Council did not act unreasonably in considering it expedient to issue the enforcement notice for their stated reasons.

12. The Secretary of State considers that the planning appeal decision of 18 March 2019, granting planning permission for the development the subject of the enforcement notice, represents a material change in circumstances since the enforcement notice appeal was made and was sufficient to cause the Council to review their case on appeal and to withdraw the notice. It is therefore concluded that the Council had good reason to withdraw the enforcement notice.

13. As to the timing of the withdrawal of the enforcement notice, the Secretary of State notes that the planning appeal decision is dated 18 March 2019, but the enforcement notice was not formally withdrawn until 23 September 2019 some 6 months later. In their costs rebuttal the Council accept that there was a delay in withdrawing the enforcement notice and say that they waited until after the expiry of the 6-week period for the legal challenge to the planning appeal decision before referring the matter to their Legal Department. However, the view is taken that if a local planning authority is going to withdraw a notice they have a corporate responsibility to do so promptly before the parties are committed to incurring further abortive appeal expense. He therefore considers that a 6-month period for the Council to reconsider their stance in relation to the enforcement notice was overly excessive in the particular circumstances of this case.

14. In the circumstances described the Secretary of State concludes that the Council's delay in withdrawing the enforcement notice following the Inspector's related appeal decision dated 18 March 2019 was unreasonable with the result that the appellant, who was professionally represented, would have been put to some unnecessary expense in preparing for the enforcement appeal. The conclusion drawn is that if the Council had acted more promptly in accordance with sensible case management to withdraw the enforcement notice the appellant would not have continued to incur wasted expense in preparation for the enforcement appeal. A partial award of costs will therefore be made.

15. With regard to the extent of the award, the Secretary of State considers that the Council had adequate opportunity, following the Inspector's appeal decision letter of 18 March 2019, to have reviewed their position regarding the enforcement notice. It is therefore considered that a partial award of costs from 1 April 2019 (inclusive) is justified. This allows the Council a period of 14 days in which to review their position and to withdraw the enforcement notice following the date of decision on the related planning appeal.

16. For the avoidance of doubt, the Secretary of State does not determine the amount payable where an award of costs is being made. That will be for the parties to resolve by agreement on the evidence of expense actually incurred or, failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

FORMAL DECISION

17. For these reasons, the Secretary of State has decided that a partial award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

18. Accordingly, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that the London Borough of Hillingdon Council shall pay to Mrs Roshan Versi her costs of the enforcement notice appeal proceedings before the Secretary of State limited to those costs incurred from 1 April 2019 (inclusive); such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 of this letter.

19. You are now invited to submit, on behalf of the appellant, details of those costs to the London Borough of Hillingdon Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to them.

Yours faithfully

S Parsons

STEVE PARSONS

Authorised by the Secretary of State
to sign in that behalf