



Costs Decision

Site visits made on 17 June and 4 August 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Costs application in relation to Appeal Ref: APP/X5210/C/19/3240755 5 Bolton Road, London NW8 0RJ

- 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 S Masters for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against an enforcement notice alleging the erection of timber fences on top of the existing brick walls along the boundaries with No 4 and 6 Bolton Road.
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Decision

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

Preliminary Matters

2. This costs application relates to the appeal decision issued on 19 August 2021. The Planning Practice Guidance (PPG) advises that applications for costs in written representations appeals should be made at the latest by the deadline for final comments. The appellant's costs application in this case was received at the time of submitting their appeal statement and so was in time.

Reasons

3. The PPG advises 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 in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The appellant in this case confirms that the application for costs is made on the basis of substantive grounds. However, some procedural concerns are also raised and I will look at those first.

Appeal procedures

4. The suggestion is that the Council did not adhere to the appeal timetable by not submitting the questionnaire by 28 January 2020. However, the questionnaire document and attachments are logged on the Planning Inspectorate system as having been received on that date. There was no procedural unreasonableness by the Council therefore.

Substantive issues

5. The appellant has raised concerns regarding the approach of the Council in reaching the view that the erection of the timber fences required planning

- permission. I agreed with the Council however and considered that a breach of planning control had occurred, dismissing the appeal on ground (c). The Council's position about the need for permission was, overall, correct. There were some complexities to how this needed to be considered. Although the Council may have reached a range of measurements of the height of the development, the key issue in my view was whether it was higher than previously. From the evidence I reached the conclusion that it was. The onus is upon the appellant to prove their case on the balance of probabilities, and they did not do so. The appeal on ground (d) was also dismissed.
6. I allowed the appeal on ground (a) and quashed the notice. I considered that the development was acceptable on its planning merits. In doing so, I reached a different view of the impact of the development than the Council had in issuing the notice.
 7. The Council had backed up their decision regarding the merits of the case by providing evidence about the design of the development and the character and appearance of the area. They included with their submissions the 'St John's Wood Conservation Area Character Appraisal and Management Strategy', which I found very useful. It helped me to understand the impact of the development on the significance of the area. Whilst the rear-garden position of the fencing was of relevance, the Council took a different view about the overall impact upon the wider Conservation Area.
 8. I acknowledge in my decision that the fencing has a more robust visual enclosing effect than other trellising in nearby gardens and that it is more modern than is generally the case (although the appellant did refer to some other similar fencing). I reached a similar view therefore as the Council in that respect. In my judgement however the development is acceptable but the Council were entitled to reach a different view about the impacts and whether relevant policies were complied with. The ground (a) case turned on a question of judgement that different decision makers may reach different conclusions about and the Council adequately explained their reasoning.

Conclusion

9. The Council has not acted unreasonably with respect to the procedural or substantive aspects of the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Harwood

INSPECTOR