

Costs Decision

Inquiry held on 8 November 2016

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2016

Costs application in relation to Appeal Ref: APP/A5270/C/16/3144693 12 Denehurst Gardens, London, W3 9QY

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 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 full award of costs against Mr Habib Rehman.
 - The Inquiry was in connection with an appeal against an enforcement notice alleging (as corrected) without planning permission the material change of use of the property into two self-contained residential units.
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Decision

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

The submissions for the Council – Main points

2. The Council's submissions were made in writing. The Council submitted that Mr Rehman, given the manner in which he presented his case, had no reasonable prospect of success in his appeal and he failed to comply with procedural requirements in that he provided no proof of evidence within the time limit and sought to introduce evidence at a very late stage. No agreement was reached on the statement of common ground and given that he was aware at that time of the risks of costs being sought against him, his continuation of the appeal to and at the Inquiry was unreasonable and resulted in wasted costs to the Council.

The response by Mr Rehman – Main points

3. Mr Rehman explained that from July he has been having to care for his elderly Father and that although it was at the back of his mind that he had to submit evidence he did not have the time to do so.
4. He considered that he did have sufficient evidence to succeed in his appeal, otherwise he would not have put such effort into the appeal. He had tried to speak to Mr Crawford without success and had contacted his Councillor. Once he saw the draft statement of common ground he produced all he could to prove the occupancy of the two units.
5. The affidavits had been sent to PINS in July and the proof had also been sent in but it had been returned as it was too late.

Reasons

6. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying
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for costs to incur unnecessary or wasted expense in the appeal process¹.

Appellants are required to behave reasonably in relation to procedural matters by, for example, complying with the requirements and deadlines of the appeals process² and are at risk of an award of costs against them if the ground of appeal had no reasonable prospect of success³.

7. Mr Rehman provided two letters with his grounds of appeal, one from Mrs Salameh and one from Ms Salameh. These letters formed the basis of affidavits which were made in April 2016. Mr Rehman said that the affidavits were sent to the Inspectorate in July but there is no record of them having been received⁴.
8. Mr Rehman sent a proof of evidence with nine appendices (the affidavits were included as appendices) to the Inspectorate around 19/20 October 2016. The proof and the appendices were returned as being out of time because they should have been submitted by 11 October 2016, a date that Mr Rehman had been made aware of in a letter from the Inspectorate dated 30 August 2016.
9. I allowed Mr Rehman to submit his proof at the Inquiry and to call Ms Hachem to give oral evidence without any written proof because he had given notice in the Inquiry Timetable Form of his intention to call her. The Council was given time to consider Mr Rehman's proof and his oral evidence before cross-examination. Although Mr Rehman's behaviour in submitting the proof and the documentation at such a late stage was unreasonable, I do not consider that the Council incurred any wasted costs because minimal additional time was spent at the Inquiry arising from his behaviour. In reaching this conclusion I note that Mr Rehman would have been able to give oral evidence to the Inquiry without having provided a proof which would have had the same effect as the late submission of his proof.
10. So far as the statement of common ground was concerned this was drafted by the Council, Mr Rehman did not agree it and after amendment he signed it during the Inquiry. I do not consider his behaviour to have been unreasonable because he was entitled to disagree with what had been drafted.
11. Mr Rehman made an appeal on ground (d) only. In his grounds of appeal he put forward a case based on his understanding of what he had to prove. He added to this evidence in his proof and appendices and his own oral evidence and he called Ms Hachem in support of his case. It is unfortunate that Mr Rehman did not seek professional advice but it is a matter for him how he pursued his appeal. The evidence was fully tested at the Inquiry and, although I dismissed the appeal, I do not consider it was unreasonable for Mr Rehman to have pursued the appeal.

Conclusions

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Gloria McFarlane

Inspector

¹ Paragraph 030

² Paragraph 052

³ Paragraph 053

⁴ I checked with the Case Officer and the electronic file