

Costs Decision

Inquiry held on 31 October 2016

Site visit made on 31 October 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 15 December 2016

Costs application in relation to Appeal Ref: APP/A5270/C/16/3150612 Land at 35 Montague Road, Southall, Ealing UB2 5PD

- 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 full award of costs against Mr Inder Bains.
 - The Inquiry was in connection with an appeal against an enforcement notice alleging a material change in the use of the land to the rear of the premises as 2 self-contained residential dwellings.
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Decision: The application is granted in the terms set out below.

The submissions for the Council of the London Borough of Ealing

1. The essence of the Council's case is that the appellant has failed to present any sort of case to the Inquiry. In procedural terms, the Council points to the fact that the appellant did not provide a Statement of Case or a Proof of Evidence. In substantive terms, the Council considers that the appellant could not have succeeded on ground (d) and that the appeal on ground (a) was not supported by any substantive case.

The response by Mr Inder Bains

2. The appellant did not seek to contest the Council's application for costs and made no representations in response to it at the Inquiry.

Reasons

3. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against an appellant. These include not complying with the requirements and deadlines of the appeal process, pursuing a ground of appeal that had no reasonable prospect of succeeding and, where the development is clearly not in accordance with the development plan, pursuing an appeal where there is inadequate supporting evidence to justify planning permission being granted.
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4. The appellant did not submit a Statement of Case and did not submit a Proof of Evidence. The appellant had an opportunity at the Inquiry to offer an explanation for that failure to accord with appeal procedures, but chose not to do so. By reason of the fact that the appellant did not set out his case in a Statement of Case or a Proof of Evidence, the Council was obliged to cover in its evidence points that it anticipated might be raised at the Inquiry but which in the event were not. This caused the Council to waste time and to incur unnecessary costs in preparing that evidence.
5. The evidence provided by the appellant in support of his appeal was extremely limited. The appeal on ground (d) was ultimately withdrawn but no factual evidence was submitted in support of that ground of appeal whilst it was still live. Similarly, little evidence was submitted in support of the ground (a) appeal: there was no attempt to justify the breach of planning control against policies in the development plan, and few other material considerations were advanced that might outweigh any acknowledged failure to accord with those policies. Without that evidence, the appeal on ground (a) did not have a reasonable prospect of succeeding.
6. I am mindful that English is not the appellant's first language and, to some extent, these procedural and substantive failures might have been understandable if the appellant had not been professionally represented. However, the appellant was represented throughout the appeal process by an agent. I have not been advised of the area of expertise in which the appellant's agent practises but, by submitting the appeal on his behalf and representing the appellant at the Inquiry, I must assume that the appellant's agent is familiar with the appeal process. Consequently, the appellant can have no excuse for not complying with the requirements and deadlines of that process in terms of failing to understand what was required of him.
7. The Planning Practice Guidance clearly states that the right of appeal must be exercised reasonably. Having regard to the above, I have no hesitation in finding that the appellant did not exercise his right of appeal in a reasonable manner. The appellant's unreasonable behaviour has caused the Council to incur unnecessary and the wasted expense in defending this appeal. I therefore consider that the full award of costs sought by the Council is justified.

Costs Order

8. In exercise of the powers under sections 174, 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Inder Bains shall pay to the Council of the London Borough of Ealing, the full costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Mr Inder Bains, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Paul Freer

INSPECTOR