The Planning Inspectorate

Costs Decision

Inquiry and site visit held on 26 October 2016

by A U Ghafoor BSc (Hons) MA 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/T5150/C/16/3146188
21A and B District Road, Wembley HA0 2LE

- 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 Brent for a full award of costs against Mr Ratnasingam Sivakumar.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the outbuilding in the rear garden of the property to a single dwellinghouse.

Decision

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

The submissions for the Council

2. The following key points form the basis of this application. Mr Sivakumar's appeal is unreasonable resulting in wasted expense to Council taxpayers. He has had professional guidance but he did not recruit a consultant for the Inquiry, because he says he did not have enough money. The Council surmise he had been advised not to pursue ground (d) due to lack of evidence. He pursued an appeal that had no prospect of success and it should not have been made.

The response by Mr Sivakumar

3. The following key points form the basis of this response. A planning consultant advised I had good chance of winning the appeal on ground (d). He had not been recruited because of unaffordable fees.

4. Mr Peggie, the Council investigating officer, advised the unauthorised use relates to the whole property as a house in multiple occupation. Subsequently, it became apparent the time limit for enforcement action is four years in relation to the alleged single dwellinghouse use of the outbuilding. Bundle of evidence shows the material change of use of the outbuilding occurred in excess of four years.

Reasons

5. Irrespective of the outcome, the Planning Practice Guidance (PPG) advises an award of costs is possible 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.

6. The right of appeal should be exercised in a reasonable manner and I understand the Council's concern about wasted resources where there is no

reasonable prospect of success. In this case, however, a planning agent submitted his initial appeal form. The latter indicates written representation procedure is suitable. However, the appeal start letter issued by The Planning Inspectorate made clear that a Local Inquiry is necessary[1]. The reasons for the Inquiry are expressly set out in the correspondence and no party challenged this determination. The letter states that the Inspector will need to hear evidence of fact, given under oath, and may need to test that evidence by question and answer. That has been borne out.

7. Contrary to the Council's claim, there is nothing to cast any doubt on Mr Sivakumar's assertion that he could not afford legal or professional representation. He appeared in person and managed to present his own evidence as advocate witness without prejudice to any party.

8. Mr Sivakumar submitted voluminous documents within certain timescales. He supplemented these with oral testimony at the event. Additionally, he produced witnesses on the day. My decision explains the reasons as to why I have disagreed with the immunity claim, chiefly, due to the ambiguous and unclear nature of that evidence. Nevertheless, it seems to me that he thought he had a reasonable prospect of success because of the amount of evidence produced in support of ground (d). I consider that sufficient evidence had been presented to substantiate all of the main arguments in support of the ground (d) appeal.

9. Based on all of the relevant circumstances, I conclude that the Council has not demonstrated unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG. An award of costs, partial or full, is unjustified in this case.

A U Ghafoor

Inspector

[1] Letter from The Planning Inspectorate date 15 March 2016.