



Costs & Decisions Team

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Mr Cheung
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Your Ref:

Our Ref: APP/H5390/W/16/3151993

Date: 6 January 2017

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 322
LAND AT 109 & 109B NEW KING'S ROAD, LONDON, SW9 4SJ
APPEAL BY GOVERNSIDE LIMITED: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's decision dated 22 December 2016 concerning the appeal by Governside Limited. It was against the London Borough of Hammersmith & Fulham Council's decision, dated 10 December 2015, to refuse planning permission for residential development/commercial use on land at 109 and 109b New King's Road, following the demolition of existing buildings.

2. This letter deals with the appellants' application for a partial award of costs against the Council as made in written correspondence dated 20 September 2016. The Council replied on 18 October 2016. As these costs submissions have been available to the appeal parties it is not proposed to summarise them. They have been carefully considered.

Summary of the decision

3. The formal decision and costs order are set out in paragraphs 14 and 15 below. The costs application succeeds and a partial award of costs is being made.

Basis for determining the costs application

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal. 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 in proceedings 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 the Government's Planning Practice Guidance (PPG), the appeal papers, the parties' written costs

submissions and all the relevant circumstances.

Reasons for decision

7. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably, with the result that the appellants were put to unnecessary expense, by failing to attend a site visit (accompanied) as arranged for 13 September 2016 (at 11:00am). The guidance at paragraph 047 of the PPG is relevant to these circumstances.

Conclusions

8. The Planning Inspectorate initial letter of 26 August 2016 notified the principal parties that the accompanied site visit (ASV) would take place on 14 September 2016 (at 09:30am). However, the Planning Inspectorate's subsequent letter of 5 September 2016 informed the parties that the date and time of the ASV had been changed to 11:00am on 13 September 2016. The appellant/appellants' representatives and the Inspector attended at the re-arranged date and time but the Council were not represented at the event. The Inspectorate's letter of 15 September 2016 informed the Council that the Inspector waited an appropriate length of time at the scheduled site visit but no representative from the Council attended. The scheduled site visit was aborted and a further ASV was arranged for 10 October 2016. On this occasion the Council were represented and the Inspector was able to carry out the site inspection and to proceed to determine the appeal.

9. In their response to the costs application the Council referred to an "unfortunate series of events that led to the failure to attend the site visit on 13 September". They say that as the Council's Case Officer, Graham Simpson, was copied in on the Inspectorate's letter about the original site meeting date, the Council assumed that he had also been copied in on the Inspectorate's second letter informing the Council of the change of date. Unfortunately, this was not the case and therefore the case officer was unaware that the site visit date had changed.

10. While the Council considered that the "no show" was an unintentional occurrence the fact remains that they were properly informed about the site visit arrangements and were responsible for ensuring that they were represented at the scheduled visit. The Secretary of State notes that the Planning Inspectorate's initial letter of 26 August 2016 and their second letter of 5 September 2016 informing the Council that the ASV date had been changed to 13 September were both sent to the same generic Council email address (planningappeals@lbhf.gov.uk). The view is taken that it was the Council's corporate responsibility to make sure that they had the necessary internal arrangements in place to ensure that whoever was responsible for representing the Council at the ASV was notified of any subsequent change in date. This clearly did not happen in this case. As a result of the Council's failure to attend the site visit it was aborted and arrangements had to be made for an accompanied site visit at a later date. In these circumstances it is concluded that the failure to attend the site visit was unreasonable.

11. As to whether or not the unreasonable behaviour caused the appellants to incur unnecessary or wasted expense, the Secretary of State considers that the practical consequence of the Council's failure to attend the visit was that the appellants incurred identified unnecessary expense associated with their attendance and that of their agent/representative on that date as a result of the site visit having been aborted.

12. In the circumstances described it is concluded that the Council acted unreasonably with the result that the appellants were put to unnecessary or wasted expense in connection with the aborted site visit. A partial award of costs will therefore be made to

reflect this. No reason is seen to conclude that an award should be withheld on grounds of exceptional or mitigating circumstances.

13. The Secretary of State does not determine the amount of costs payable where an award of costs is 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

14. For these reasons, it is concluded that a partial award of costs against the Council, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

15. Accordingly, the Secretary of State for Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322 of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that the London Borough of Hammersmith and Fulham Council shall pay to Governside Limited their costs of the appeal proceedings before the Secretary of State limited to the costs incurred in connection with attending the site visit (abortive) on 13 September 2016; 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.

16. You are now invited to submit to Graham Simpson, Planning Officer at the London Borough of Hammersmith and Fulham details of those costs with a view to reaching agreement on the amount. A copy of this letter has been sent to him.

Yours faithfully

S Parsons

STEVE PARSONS
Authorised by the Secretary of State
to sign in that behalf