

Costs Decision

Inquiry held on 29 November 2016

Site visit made on 29 November 2016

by Alwyn B Nixon BSc MRTPI

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

Decision date: 1 March 2017

Costs application in relation to Appeal Refs: APP/T5150/C/16/3146014, APP/T5150/C/16/3146016

15 Prout Grove, London NW10 1PU

- 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 partial award of costs against Mr Ben Kpogho.
 - The inquiry was in connection with appeals against an enforcement notice alleging “without planning permission, the material change of use of the premises from a house to flats”.
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Decision

1. The application for an award of costs is allowed in part, in the terms set out below.

The submissions for the Council of the London Borough of Brent

2. The costs application was made orally at the inquiry. The Council considers that it has been put to additional and wasted expense due to Mr Kpogho failing to comply with procedural requirements. Mr Kpogho did not provide any proof of evidence and as a result the Council had no idea as to the substance of his case. The Council was left in the position of having to second guess the arguments that would be advanced and so had to prepare more widely than would otherwise have been required, to cover all eventualities. This had led to additional time spent in preparing for the inquiry, to cover the possibility that the appellant might adduce extra evidence in person on the day.
3. In addition, the length of the inquiry was extended by Mr Kpogho’s tardiness in not attending the inquiry on time, leading to a 45 minute delay in the proceedings. This amounted to unreasonable behaviour which had increased the Council’s costs incurred in attending the inquiry.

The response by Mr Ben Kpogho

4. The response was made orally at the inquiry. The Council is “living in a glass house and throwing stones”. When asked by the Inspector to provide details of what additional work it had had to undertake in preparing for the inquiry, the Council could not name anything specific. The Council knows the history of use of the premises as flats perfectly well, because the Council has itself been arranging for tenants to occupy the flats at 15 Prout Grove.
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5. The Council's case is based on a defective notice. It is clear that it did no proper research and relied only on information on electoral registration returns, rather than examining its own housing benefit and council tax valuation records. Even now the Council was still disregarding these records, despite the appellant submitting information concerning this in advance of the inquiry.

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 for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may include failing, without good reason, to adhere to the procedural requirements of the appeal process.
7. In this case the appellant's engagement with the procedural requirements of the inquiry process following the initial submission of the appeal has been minimal. Nothing further was received from Mr Kpogho relating to the appeal until well after the deadline for proofs of evidence. That said, the appeal has proceeded on the basis of ground (d) alone from the outset. The basis of the ground (d) appeal was straightforward and clearly set out on the submitted appeal form, referring to Council housing benefit records and Council tax registration and payment records in support of the claimed position. In the absence of any indication to the contrary, the Council would have been entirely justified in proceeding on the basis that Mr Kpogho's initial appeal submission constituted the substance of Mr Kpogho's case. Whilst Mr Kpogho belatedly submitted documentation to support his case on 18 November (11 days before the inquiry), the Council has not pointed to this as unreasonable behaviour or claimed that it caused it to incur unnecessary or wasted expense.
8. At the inquiry Mr Kpogho did not introduce new evidence or expand his case into new areas not previously identified in his grounds of appeal. The Council, when asked by me to specify the areas of potential argument on which it had spent wasted time preparing, was unable to make any meaningful response. Accordingly, so far as this element of the application for a costs award is concerned, I do not find that Mr Kpogho's conduct amounted to unreasonable behaviour which caused the Council to incur any identifiable unnecessary or wasted expense in the appeal process.
9. Turning to the second matter raised by the Council, Mr Kpogho was not in attendance when the inquiry opened at the notified time of 10.00. The proceedings were delayed for 45 minutes due to Mr Kpogho's late arrival; it was not possible to proceed because Mr Kpogho was the sole representative for the appellants' side in the proceedings. There was no communication of Mr Kpogho's whereabouts or the reasons for his lateness or non-attendance.
10. When the inquiry resumed upon Mr Kpogho's arrival, his explanation for his lateness was that he had anticipated that there would be other cases listed to be heard and that he would not be called upon until later. However, the notification letters confirming the inquiry arrangements made it clear that the inquiry into these appeals would commence at 10.00. Public local inquiries involve a range of parties and are held at public expense. I consider that Mr Kpogho's failure to attend the inquiry at the appointed time without reasonable excuse amounted to unreasonable behaviour causing the proceedings to be adjourned for 45 minutes, thereby causing wasted expense to the Council in

having its representatives attend the inquiry for longer than should have been necessary.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Ben Kpogho shall pay to the Council of the London Borough of Brent the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in those representing the Council having to attend the inquiry for an additional period of 45 minutes; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Mr Ben Kpogho, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alwyn B Nixon

Inspector