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## Costs Decision

Inquiry held on 4 April 2017

Site visit made on 4 April 2017

**by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA**

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

**Decision date: 21 April 2017**

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### **Costs application in relation to Appeal Ref: APP/A5270/C/16/3148146 26 Clauson Avenue, Northolt, Middlesex UB5 4PR**

- 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 Mariusz Siemieniuk-Juzwiuk.
  - The inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, the material change of use of the outbuilding to the rear of the premises to use as a self-contained residential development.
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### **Decision**

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

#### **The submissions for the London Borough of Ealing**

2. The application was submitted as printed text.<sup>1</sup> In summary, the Council contends that the appellant's case is confused, since it is argued that the outbuilding is both an annexe, ancillary to the main building, and that it was used as a self-contained dwelling by a couple who lived there, meaning it was not possible to use it as an annexe. Thus, both ground (b) and ground (d) are flawed.
3. Moreover, the appellant's evidence is insufficient to make out his ground (d) appeal. It comprises only a series of 11 invoices dated between November 2008 and November 2009 relating to the supply of building materials. It cannot be shown that the materials were used in the outbuilding, and the invoices do not support the use of the outbuilding as a self-contained dwelling for a continued period of 4 years. Moreover, no persuasive evidence was presented of the dates the kitchen and the bathroom were installed in the outbuilding.
4. In addition, the appellant behaved unreasonably procedurally, in failing to complete a statement of common ground (SoCG) in a timely manner and refusing to engage in agreeing a SoCG which the Council drafted. The Council has been left in the position of not knowing exactly the content of the ground (d) appeal and, as such, was forced to prepare several lines of discussion, much of which has been left unused. The inadequacies in the appellant's case were clearly set out in the draft SoCG and in the Council's proofs of evidence.

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<sup>1</sup> Doc 8

5. There is little excuse for the inadequacy of the appellant's case, since he was professionally and legally represented.

### **The response on behalf of Mr Mariusz Siemieniuk-Juzwiuk**

6. On ground (b) the principal arguments were presented by Mr Zablocki orally and in his witness statement. On ground (d), it is perfectly reasonable to argue in the alternative.
7. Regarding the sufficiency of evidence, besides the invoices, evidence was given by the appellant's two witnesses under oath. Mr Siemieniuk-Juzwiuk gave evidence on the installation of the kitchen and bathroom.
8. There are no tenancy agreements or rent records, but this is not unreasonable when witnesses are available for cross examination.
9. Regarding procedural matters, the SoCG could not be signed because the appellant felt that the draft did not represent common ground. The proceedings were not affected by its absence. Ground (d) took up a small amount of time at the inquiry and its issues were dealt with successfully by Mr Siemieniuk-Juzwiuk.
10. The appellant would have benefitted from a letter prior to the appeal, clearly setting out where the difficulties in its case, as the Council perceived them, lay. The appellant has a right to make use of the appeal process without undue fear of incurring a costs award.

### **Reasons**

11. 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.

#### *Procedural – Statement of Common Ground*

12. Guidance<sup>2</sup> advises that, for an appeal proceeding by a hearing or an inquiry the appellant must provide a draft SoCG. The appellant failed to do this and did not act in a co-operative way when a draft was supplied by the Council for comment.
13. Had a SoCG been prepared, the discussion between the parties which inevitably takes place during its assembly may have done much to dispel the confusion in arguments presented at the inquiry. I find the responses<sup>3</sup> of the appellant's legal advisors regarding the SoCG unhelpful. Although the Council has a role to play in making processes clear, the appellant acted unreasonably in declining to be involved in the preparation of a SoCG.

#### *Substantive – Ground (b)*

14. The witness statements for the appellant respond directly to the enforcement notice's allegation and point to evidence to indicate that the outbuilding was reconstructed as an annexe to the main residential building. They note that it was built to take overspill from the house and provide occasional accommodation for visiting family and friends.

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<sup>2</sup> Procedural Guide Planning Appeals – England, Annexe T, para T.1.1

<sup>3</sup> Doc 5

15. The extent of self-contained residential use emerged under cross examination and the witnesses' responses betrayed a misunderstanding as to the criteria associated with self-contained residential development. On balance, although unsuccessful, I find it reasonable for the appellant to attempt to make a case under this ground for the building having been used in an ancillary capacity to the main residential use.

*Substantive – Ground (d)*

16. In spite of legal representation, the appellant's case under this ground is confused and does not clearly address the allegation of material change of use to self-contained residential development. In the context of the allegation, one would expect the appellant to argue that it was too late to take enforcement action because self-contained residential use had been taking place continuously for four years or more, thereby conferring immunity.
17. However, the appellant's ground (b) arguments concerning ancillary use inevitably contradict and weaken the ground (d) case and were carried through into the ground (d) case even though they did nothing to support it. Moreover, little if any substantive evidence was put forward by the appellant to demonstrate continuous self-contained residential development over a four year period.
18. On ground (d), it was unreasonable for the appellant to pursue the contradictory arguments presented and to provide such scant evidence.

*Substantive – Ground (f)*

19. It was perfectly reasonable for the appellant to pursue this ground of appeal, which met with partial success.

*Conclusion*

20. I find that the appellant has behaved unreasonably and thereby caused the Council to incur unnecessary or wasted expense in relation to the preparation of the SoCG and in relation to ground (d) only.

**Costs Order**

21. 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 Mariusz Siemieniuk-Juzwiuk shall pay to London Borough of Ealing, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the abortive preparation of the statement of common ground and engagement with ground (d); such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mr Mariusz Siemieniuk-Juzwiuk, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

**Alan Novitzky**

Inspector

## **DOCUMENTS**

- Doc 5 Email correspondence between the Council and G-L Law
- Doc 8 Council's costs application