
Costs Decision

Site visit made on 10 May 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 17 May 2017

**Costs application in relation to Appeal Ref: APP/G5180/C/16/3158293
Land on the west side of Lower Road, Orpington also known as 1A
Sanderstead Road, Orpington, BR5 4AE**

- 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 Bromley for a full award of costs against Mr Xhevat Bafcari.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the land from Van Hire Yard to use as a hand car wash and valet facility with associated business operations, structures, equipment and new access into Sanderstead Road.
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Decision

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

Procedural matters

2. The application was submitted in writing and Mr Bafcari responded in writing on 23 February 2017.

Reasons

3. The Planning Practice Guidance (PPG) 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.
4. Mr Bafcari contends that, notwithstanding Inspectors' findings in 2 previous appeals¹ that the car wash/valeting use harmed neighbours' living conditions, he has engaged professional experts to demonstrate that such concerns are unfounded or, where there has been any doubt, he has taken steps to overcome concerns. However, as indicated in my decision on the substantive appeal, the planning merits of the use are not under consideration and Mr Bafcari has produced no evidence to lead me to a different conclusion to that reached by the Inspector in the March 2016 lawful development certificate (LDC) appeal decision², namely that the change to a car wash/valeting use was a material change from the previous vehicle hire use.
5. In the absence of an appeal on ground (a), the issues on grounds (b) and (c) were not whether planning permission should be granted, but whether what was alleged had in fact occurred and, if so, whether it *required* planning

¹ Refs APP/G5180/W/15/3003268 and APP/G5180/A/16/3146055.

² Ref APP/G5180/X/15/3131592.

permission. Given the recent decision on the previous LDC appeal, this appeal had no reasonable prospect of success on either ground. Paragraph ID 16-053 of the PPG indicates that pursuing an appeal in these circumstances amounts to unreasonable behaviour. The Council had to respond to the appeal, so that unreasonable behaviour resulted in the Council incurring unnecessary costs. A full award of costs is therefore justified.

6. I note Mr Bafcari's criticisms of the Council in their dealings with him, but they do not alter my conclusion on the merits of the costs application.

Costs Order

7. 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 Xhevat Bafcari shall pay to the Council of the London Borough of Bromley, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Mr Xhevat Bafcari, 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.

J A Murray

INSPECTOR