
Costs Decision

Site visit made on 24 April 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 30 May 2017

Costs application in relation to Appeal Ref: APP/X5990/C/16/3163163 367-369 Edgware Road, London, W2 1BS

- 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 City of Westminster Council for a partial award of costs against Mr Tariq Mubarak.
 - The appeal was against an enforcement notice alleging the installation of an extract duct at the rear elevation of the building extending from ground floor level to second floor level.
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Decision

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

The submissions by the Council – Main points

2. The Council made its application in writing for a partial award of costs in relation to the additional time and expense wasted in responding to the relevant and technical supporting evidence which was submitted on 21 April 2017 after the final comments deadline.
3. The Appellant's three acoustic reports were received by the Council one working day before the site visit and seven working days after the final comments stage. The late submission of these documents required an additional response to the comments already set out in the Council's written statement and final comments. The response was required within a short timescale and necessitated the Planning Officer seeking further advice from Noise Consultants; both the Planning Officer and the Noise Consultants had to prioritise this response over other work commitments.
4. It is the Council's view that one of the documents¹ has been in the Appellant's possession since November 2016 and the two other reports have already been considered by the Council in respect of a retrospective application². The Appellant has demonstrably behaved unreasonably by failing to co-operate and provide the evidence claimed to be integral to the Appellant's arguments in a timely manner to justify why the appeal should be allowed. Furthermore, the evidence was submitted at a very late stage and well outside the final comments deadline.

¹ A0367

² Ref 15/00475/FULL

5. The Council considers that it should be awarded its costs for the wasted time and expense in responding to the late submission of the evidence. It is also considered reasonable and proportionate for the City Council to recover its costs for producing this costs application.

The response by the Appellant – Main points

6. The Appellant's response was made in writing.
7. The original reports had been provided to the Council when the application for planning permission was originally made which was refused and is now the subject of this appeal. The Council had all this information at the very beginning.
8. The latest report was submitted with a slight delay and this is the third version of the report. It was carried out to challenge the refusal of planning permission and was in support of the appeal. It was instructed and prepared after the appeal had been lodged with the Inspectorate and so it is the Appellant who has suffered unnecessary costs and not the Council. The Appellant has not failed to co-operate and he has supplied and responded to all the requests made by the Inspectorate and no deadlines have been missed.

Reasons

9. 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 process³.
10. The Appellant said in his statement that he was relying on, among other documents, the Practical Acoustics Planning Compliance Report dated November 2011 and the UK Sound Testing Building Regulations Part E Sound Insulation Report dated 31 October 2011 and that they had been attached. However, the reports were not supplied with the appeal documents. The Appellant also referred in his statement to assessments of noise and odour which he intended to submit 'in due course'.
11. The Appellant was advised by email dated 20 April 2017 that if these reports and assessments were to be taken into account they should be provided to the Inspector and the Council by Monday 24 April 2017. Any comments by the Council on the reports and assessment were to be submitted by 31 April 2017. The documents were submitted on 21 April and the Council's request for 28 days in which to consider them was granted by the Inspectorate.
12. The aim of the costs regime is to encourage those involved in the appeal process to behave in a reasonable way and to follow good practice both in terms of timeliness and in the presentation of full and detailed evidence to support their case. It is the responsibility of the Appellant to provide all the supporting evidence upon which he relies and for the evidence to be provided in accordance with the relevant procedural timetable. I appreciate that the earlier reports had been submitted to the Council in respect of a previous matter but that does not negate the Appellant's responsibility to provide full documentation in this appeal. Although the Council had alluded to the reports in its statement, once they had been formally submitted they had to be considered and commented on by the Council in the context of the appeal. It

³ Paragraph 030

was unreasonable of the Appellant not to have submitted them at the correct time and the Council incurred costs in having to consider them at the later stage.

13. It is a matter for an Appellant how he chooses to present his appeal and in this case he chose to commission a report on noise and odour. This report is dated November 2016, however, although it was referred to in his statement the Appellant did not provide it until 21 April 2017 following a request from the Inspectorate. I consider this delay in submitting the assessments was unreasonable and the Council incurred costs in having to respond to the assessments after its own evidence had been submitted.

Conclusions

14. 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

15. 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 Tariq Mubarak shall pay to the City of Westminster Council the costs of the appeal proceedings described in the heading of this decision limited to the costs incurred in relation to responding to the reports and assessments which were submitted on 21 April 2017 together with the costs of this application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The Council is now invited to submit to Mr Tariq Mubarak, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gloria McFarlane

Inspector