
Costs Decision

Inquiry held on 31 May 2017

Site inspection made on 15 June 2017

by D E Morden MRTPI

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

Decision date: 02 June 2017

Costs application in relation to Appeal Ref: APP/A5270/C/16/3154726 18 Lea Road, Southall, Ealing, UB2 5QA

- 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 G Rai.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the outbuilding to the rear of the premises to use as a self-contained dwelling.

Summary of Decision: The application for an award of costs is allowed in the terms set out in paragraph 10, 11 and 12 below.

The submissions for the Council

1. The Council submitted that the appellant had acted unreasonably throughout the process and his appeals on both grounds had no chance of success. Substantively he had put no recognisable case forward in planning terms to support either appeal. His case was hopeless from the start and on his own evidence at the Inquiry he had simply confirmed that he had no case.
2. Procedurally he had not complied with the rules set out for inquiries. Beyond his initial appeal he had provided no further information until he was questioned at the Inquiry. He produced no statement of case, proof of evidence or statement of common ground.
3. All this behaviour meant that the Council had to consider and prepare for arguments that were not made at the Inquiry. That unreasonable behaviour resulted in wasted expense for the Council which had to prepare a case for all eventualities when the evidence presented by the appellant orally proved he had no case. The Council is entitled to its full costs in those circumstances.

The response by Mr G Rai

4. In response the appellant stated only two things. Firstly he had thought about engaging a solicitor but that was too costly. Secondly he had been attacked earlier this year, suffered a fractured skull and had been in an induced coma for several weeks. He had not therefore had the time to prepare anything as required by the Inquiries Rules.

Reasoning

5. 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.
6. Regarding the unfortunate assault, I asked the appellant if, in those circumstances, he had contacted PINS and asked for the inquiry to be postponed for a short time to enable him to sort out his case. He stated that he had not done so but probably should have.
7. It was clear from the evidence given by Mr Rai, whether or not he had been represented, that he had no case on either ground (c) or (d) and, therefore, absolutely no hope of success with his appeals. I acknowledge that the Council did not forewarn the appellant that they were going to seek costs and invite him to withdraw but there is nothing in the guidance advocating that approach. Indeed the guidance states (at para 054 Ref ID:16-054-20161210) that if an appeal is withdrawn without any material change in the planning authority's case or any other material change in circumstances relevant to planning issues in the case, it would not prevent an award of costs being made to a party that can show it has been caused unnecessary expense.
8. In this instance the Council has had to prepare a case covering all eventualities because it had no knowledge of what evidence, if any, was going to be put forward by the appellant. That was clearly wasted expense by the Council.

Conclusion

9. On the appellant's own evidence it is clear that he had no case on either ground. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated by the Council and I will allow the application.

Formal Decision and Costs Order

10. The application for an award of costs is allowed in the terms set out below.
11. 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 G Rai shall pay to the Council of the London Borough of Ealing, 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.
12. The applicant is now invited to submit to Mr G Rai, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

DE Morden

INSPECTOR