
Costs Decision

Inquiry held on 6 June 2017

Site visit made on the same date

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: 19 June 2017

Costs application in relation to Appeal Ref: APP/A5270/C/16/3156816 and 3156817

39 Leonard Road, Southall Ealing, UB2 5HZ

- 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 Mrs Gurpal Kaur Sidhu and Mr Bilhar Singh Sidhu for a full award of costs against the Council of the London Borough of Ealing.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land to the rear of the premises to separate residential use.
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Decision

1. The application for an award of costs is refused.

The submissions for the Appellants – main points

2. The Council has not provided any evidence to contradict what the Appellants have said. Inferences have been drawn relating to the Appellants' change in position but that was to meet a different case. In this appeal more details were required than from the previous appeal and mistakes were corrected. The Appellants have not sought to conceal anything and have provided evidence relating to Council Tax, rent paid and housing benefit paid. All this could have been checked by the Council and verified. To require the demolition of the outbuilding is an unreasonable approach.
3. The Appellants have incurred costs in pursuing these appeals.

The response by the Council – main points

4. The first notice was withdrawn because of the mis-description of the allegation. The Appellant's evidence in that appeal showed on the face of it a change of use of land and for that reason the second notice was issued. It was not an artificial application of s.171 as claimed by the Appellants.
 5. It is not for the Council to prove that the building was built as a dwelling, it is for the Appellants to prove that it was not. The evidence suggests strongly that it was and it is not unreasonable for the Council to seek to test that evidence at an Inquiry. The Council had told the Appellants what they had to prove in its letter of 29 October 2016 and it acted reasonably in setting out its case and its belief in the law.
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6. It is a normal part of the Council's functions to take enforcement action where there is a breach of planning control and for the Council to exercise its planning enforcement powers and duties. There is no reasonable ground for costs to be awarded against the Council.

Reasons

7. 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 process¹.
8. The Council issued an enforcement notice in April 2016; Mrs Sidhu made an appeal against it; and the notice was subsequently withdrawn by the Council. As provided for by the 1990 Act² the Council issued a second notice in July 2016 which was in different terms from the previous one and Mr and Mrs Sidhu made appeals. The Appellants' position in the second appeal with regard to the construction and use of the outbuilding and land was different in the second appeal from the position in the first appeal. The differences in the facts were apparent from the various statutory declarations that were submitted in both appeals by and on behalf of the Appellants and their oral evidence to the Inquiry.
9. Whilst I accepted that the Appellants were answering a different case in the second appeal, particularly with regard to time limits and use, only one of the factual explanations could be true and correct. In the event I found that the Appellants' evidence, and that on their behalf was unreliable and that it was more likely than not that the outbuilding had been constructed as a self-contained residential unit from the outset. The Appellants' various grounds of appeal all failed.
10. It is for the Appellants to prove their case and the Council is entitled to test the evidence at an Inquiry. The Council does not have to produce its own evidence to contradict the Appellants' evidence. The Appellants failed to prove their case and the Council did not act unreasonably in issuing the enforcement notice or in proceeding by way of an Inquiry.

Conclusions

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Gloria McFarlane

Inspector

¹ PPG Appeals Paragraph 030

² S.173A(4)