

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 the Council of the London Borough of Ealing for a full award of costs against Mrs Gurpal Kaur Sidhu and Mr Bilhar Singh Sidhu.
 - 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 allowed in the terms set out below.

The submissions for the Council – main points

2. The Appellants maintained an appeal on ground (c) that had no basis in planning law because by not making an appeal on ground (b) they accepted that the alleged change of use had taken place and such a change of use is development requiring planning permission. The Appellants accept that there is no planning permission and therefore the ground (c) appeal was without merit.
 3. The ground (a) appeal was similarly hopeless as no argument was put forward as to why a separate residential use of a backland plot complied with the Council's development plan. Any compliance with housing law has no relevance in this appeal.
 4. The Council's view as to why the allegation carried a ten year immunity period was set out in a letter to the Appellants dated 27 October 2016. The Appellants were less than truthful as to the facts surrounding the use of the property and their version of events changed three times. The outbuilding was erected in mid-2011, the ten year period could not be complied with and the ground (d) appeal was hopeless.
 5. The behaviour by the Appellants in pursuing this appeal was unreasonable and resulted in the Council incurring wasted costs.
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The response by the Appellants – main points

6. The submissions by the Council are largely assertions. The Appellants' ground (d) appeal had legal basis and it was clear from the logbook that the original intention was to complete the outbuilding as an ancillary space for the ground floor flat; it was only when this was found to be not financially viable that the separate residential unit was created. There was therefore a change of use which led to the appropriate period being four years.

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 submissions made by the Appellants in the ground (c) appeal addressed the allegation in the terms of their description of the breach rather than the actual allegation and they also made reference to the allegation in a previous notice issued by the Council which had been withdrawn. At no time did they address the question of whether the matters stated in the notice constituted a breach of planning control².
9. With regard to the ground (a) appeal although the relevant development plan policies were set out in the Appellants' submissions and were briefly addressed in closing the Appellants' case was predominantly made in respect of the current occupier and her circumstances and that the outbuilding met health and safety requirements.
10. The Guidance advises that the right of appeal should be exercised in a reasonable manner and that Appellants are at risk of an award of costs being made against them if the ground of appeal has no reasonable prospect of success³. In addition they are at risk of costs against them if the development is clearly not in accordance with the development plan and there are no material considerations that indicate otherwise⁴. In these respects the appeals on grounds (a) and (c) were unreasonable in the terms of the Guidance and led to wasted expense being incurred by the Council.
11. So far as the ground (d) appeal is concerned this included interpretation of the law as well as facts and, as is usual and the reason why this ground of appeal was brought, the Appellants and the Council took opposing views. Although I found against the Appellants they were entitled to put their case and for it to be heard. I do not consider the Appellants acted unreasonably in making appeals on ground (d).

Conclusions

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the appeals on grounds (a) and (c) and that a partial award of costs is justified.

¹ PPG Appeals Paragraph 030

² S.174(2)(c) of the 1990 Act

³ PPG Appeals Paragraph 053

⁴ PPG Appeals Paragraph 053

Costs Order

13. 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 Mrs Gurpal Kaur Sidhu and Mr Bilhar Singh Sidhu shall pay to the Council of the London Borough of Ealing the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeals on grounds (a) and (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. Mrs Gurpal Kaur Sidhu and Mr Bilhar Singh Sidhu are now invited to submit to the Council of the London Borough of Ealing to whom and to whose solicitors 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