
Costs Decision

Inquiry Held on 22 March and 2, 15 & 16 May 2017

Site visits made on 22 March and 15 May 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 20 June 2017

Costs application in relation to Appeal Ref: APP/A5270/C/16/3150254 24 Mornington Road, Greenford, Middlesex UB6 9HH

- 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 Mr Khawaja Imtiaz Ahmad for a full or partial 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 outbuilding to the rear of the premises to use as a self-contained dwelling.
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Decision

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

The submissions for Mr Ahmad

2. The costs application was submitted in writing.
3. The application is made on grounds that the Council failed to carry out proper investigation before issuing the notice contrary to Government guidance and without considering whether the use had become lawful over time; no credible evidence was provided to counter that of the Appellant; and the inquiry had to be adjourned on the first day as the Council had failed to notify interested persons correctly. The Appellant provided credible corroborating evidence that the use was more than eight years old before the notice was issued. The Council provided no evidence to prove that the Appellant's evidence is less believable. The Council's behaviour has been unreasonable in issuing the notice and has resulted in wasted expense for the Appellant in having to pursue it to appeal.

The response by the Council

4. There is no ground (b) brought in this case and thus no suggestion that the breach identified in the notice has not occurred. That breach was properly investigated by way of site visits and by interrogating the planning history. In deciding to take action it would have been concluded that there was insufficient evidence to demonstrate immunity. In addressing ground (d) the Council has provided plenty of credible evidence including a report from the Fire Brigade, notes from several site visits, neighbour observations and pointing out the flaws in the Appellant's evidence.
5. The adjournment on the first day was regrettable. Whilst it is accepted that the Council gave interested persons insufficient notification of the inquiry, the

Inspector had discretion whether or not to adjourn. The Council was not, therefore, directly responsible for the wasted expense.

Reasons

6. 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.
7. From my decision on the appeal it will be clear that I did not consider the Appellant's evidence sufficient to demonstrate, on the balance of probability, that the outbuilding had been continuously used as a dwellinghouse for a period of four years such that at any time the Council could have taken enforcement action against it; and that there had been no material change in circumstances since. Rather the Appellant had undermined the credibility of his own evidence with inconsistent accounts¹, unexplained anomalies² and unsatisfactory explanations where contradictory evidence was presented by the Council³. The Council's action in issuing a notice when there had been a clear breach of planning control and no indication that the breach had become lawful over time was not unreasonable. Furthermore, the Council bought sufficient evidence to substantiate its case including its own visits, visits from an independent third party, reports from neighbours and pointing out inconsistencies in the Appellant's case.
8. With regard to the adjournment on the first day of the inquiry, it was clearly unreasonable for the Council not to comply with procedural requirements by failing to notify interested persons of the date of the inquiry in sufficient time. To have continued with the inquiry would, as was pointed out by a correspondent, have resulted in an unfair hearing. Any other course of action other than adjourning to ensure all parties had sufficient notification and opportunity to attend would have resulted in a breach of natural justice. The Council's behaviour resulted in wasted expense in having to adjourn on the first day. Nonetheless, the entire day was not wasted as I was able to undertake the first of my accompanied site inspections on that day. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in relation to this matter and a partial award of costs is justified.

Costs Order

9. 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 the Council of the London Borough of Ealing shall pay to Mr Khawaja Imtiaz Ahmad, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in:
 - Having to adjourn the inquiry on the first day;such costs to be assessed in the Senior Courts Costs Office if not agreed.

¹ Between written and oral evidence

² Such as the dates on the builder's letter

³ The two white people present at the visit of the Fire Brigade.

10. The applicant is now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B M Campbell

Inspector

DOCUMENTS

- (i) Cost application on behalf of the Appellant