
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 the Council of the London Borough of Ealing for a full or partial award of costs against Mr Khawaja Imtiaz Ahmad.
 - 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 the Council

2. The costs application was submitted in writing.
3. In brief a full award is warranted given that the Appellant and his family have been duplicitous to an unreasonable extent. It is normal in cases such as this to prefer one version of events to another but if one version stretches credibility then a full award would be justified. The changes in the Appellant's case over the course of the inquiry were unreasonable and resulted in wasted expense for the Council in having to address additional arguments. Furthermore, the second day of the inquiry was lost because the Appellant failed to provide an interpreter despite being advised of the need to do so. An interpreter could be engaged with one day's notice or less.

The response for Mr Ahmad

4. The response was made orally at the inquiry.
5. Even if the Appellant did not clarify at an earlier stage that his son was occupying the outbuilding; that was irrelevant as the key issue to be discussed was whether the building had been occupied by somebody. Similarly whether the rent was paid in cash or in kind by doing shopping was irrelevant. Mr Ahmad clarified his relationship with Mr Irfan in his second statement and there is nothing to suggest that that resulted in any substantial change in the account of what had happened over time. At no time during cross examination was the culture of the family set up questioned, so it should be entirely reasonable to accept what they said as true. If it is accepted that the Appellant had an arguable case then no award should be made.

6. The Council did not advise of the need to provide an interpreter until the week before the inquiry when the Appellant was on holiday abroad and could not be contacted. Moreover the whole day wasn't lost as an application for an adjournment was heard and ruled upon.

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 process.
8. The appeal was brought on three grounds: (d), (f) and (g). In an appeal on ground (d) it is for the Appellant to make out his case on the balance of probability. He failed to do so. The evidence presented was shown to be unreliable and contradictory.
9. For example one of the documents from the builder, provided to show when the building was converted to a dwelling, referred to the works having been completed and payment received on a certain date but that was four months after the document was written. That went unexplained. The written witness statements, all remarkably similar, each gave an amount of rent said to be being paid, but that did not correspond to the amount on any of the Tenancy Agreements. Then in oral evidence the witnesses changed their account saying no rent was paid but shopping was done instead.
10. There was thus no consistency in the evidence presented for the Appellant and no way of being sure what, if any, was the accurate version of events. The picture painted in the oral evidence from the Appellant and his family was not borne out by what I saw at my second site visit. Even without the contradictory evidence presented by the Council, therefore, the Appellant's case was not made out. Moreover, the explanation as to why the Officer of the Fire Brigade found two other people in the outbuilding was entirely unsatisfactory. I find the Appellant's behaviour in relation to the appeal on ground (d) to have been unreasonable and to have resulted in wasted expense for the Council in having to address it.
11. With regard to the appeal on ground (f), the Appellant had no prospect of success. The Council had set out that the purpose of the notice was to remedy the breach of planning control. It is well established that it is not excessive to require items introduced to facilitate the use to be removed and the Appellant's case was that the bathroom, kitchen and partitions had all been put in to convert the outbuilding to a dwelling. Bringing this ground was unreasonable and resulted in wasted expense for the Council in having to address it.
12. Since the Appellant is successful with his appeal on ground (g), it was clearly not unreasonable to bring it and no wasted expense for the Council arises.
13. Finally, the onus is on each party to ensure that the evidence of its witnesses can be understood and thus it was for the Appellant to provide an interpreter as advised by the Council. It was unreasonable not to provide one and the second day of the inquiry had to be adjourned because of that. That was unreasonable behaviour and resulted in wasted expense although it is right to say that the entire day was not lost as the first two hours were spent dealing with the application for an adjournment.

14. For the reasons given above I 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 Khawaja Imtiaz Ahmad 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:

- Addressing the appeal on grounds (d) and (f); and
- Having to adjourn the inquiry on the second day;

such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Mr Khawaja Imtiaz Ahmad, to whose agent 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

A Cost application on behalf of the Council