
Costs Decision

Inquiry held and site visit made on 9 May 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

Decision date: 28 June 2017

Costs application - Appeal Ref: APP/A5270/C/16/3141913 - 915 108 Girton Road, Northolt, UB5 4ST

- 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 ("the Council") for a full award of costs against Jack Thomas Dominiak, Marcin Tadeusz Szablinski and Ewelina Szablinski ("the Respondents").
 - The Inquiry was in connection with an appeal against an Enforcement Notice alleging without planning permission, the material change of use of the land at the rear of 108 Girton Road, Northolt, UB5 4ST to use as a self-contained residential dwelling.
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Decision

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

Procedural Matter

2. The Appeal Decision was issued on 6 June 2017.

The submissions for the Council

3. The costs application was submitted in writing at the Inquiry.

The response by the Respondents

4. The response was made orally at the Inquiry.

Reasons

5. The Planning Practice Guidance ("the PPG") 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. This is a case where the Respondents only appealed the Enforcement Notice on Ground (d), that is, that at the date the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated in the Enforcement Notice.
7. The Enforcement Notice stated in Part 4 paragraph (a) that the alleged breach of planning control has occurred within the last 10-years.
8. In the Respondents' Grounds of Appeal they argued, amongst other things, that the relevant period for taking enforcement action was four years and they relied on the case of *Arun District Council -v- First Secretary of State & Brown [2006] EWCA Civ 1172* ("the Arun Decision"). In paragraph 69 of my Appeal Decision I explained why the Arun Decision is of no relevance to this appeal.

9. In March 2016 the Council submitted their statement ("the March Statement"). At this stage the appeal was being dealt with through the written representations procedure. The Council explained in the March Statement in paragraphs 5.1 to 5.6 why the correct period for taking enforcement action in this case is 10-years. The Council also explained in the March Statement why the Arun Decision was not relevant in this appeal. The March Statement was sent to Jack Dominiak under cover of a letter from the Planning Inspectorate dated 10 March 2016 which had been received by the 14 March, 2016. Having received a full explanation of why the Council were relying on the 10-year rule I consider that any costs in respect of unreasonable behaviour should be from that date. By that date the Respondents were fully aware of the arguments that they faced regarding the 10-year rule.
10. In my assessment the Respondents did not address the fundamental question as to whether the 10-ten year rule applied in this case. I am aware that when the Council issued the first Enforcement Notice dated 2 June 2014 they referred to a change of use of the outbuilding and that the change of use had occurred within the previous four years. However, that Enforcement Notice was withdrawn and the second Enforcement Notice issued. As far as I am aware there was no explanation at the time the second Enforcement Notice was issued as to why the Council had changed the basis of their enforcement action. The second Enforcement Notice refers to a change of use of the "land" rather than the outbuilding and thus their reliance on the 10-year rule.
11. I am aware that the Respondents were not represented by a planning professional during the appeal. It was suggested that they could not afford any representation. However, I was informed that two of the Respondents receive over £800 per month in rent payments from the third Respondent. I consider that having been made aware of the Council's view that the 10-year rule applied in this case the Respondents should have sought their own independent legal or professional planning help on this matter. Had they done so it seems likely to me that they would have been informed how the 10-year rule would apply in this case and as such they would have known that they could not succeed on Ground (d). Choosing not to take advice but to continue to rely on the Arun Decision amounts, in my assessment, to unreasonable behaviour.
12. I have addressed, in my Appeal Decision, the hidden Ground (b) appeal and explained why the use of the outbuilding was not ancillary to the main house at No. 108. The Council explained in the March Statement what the High Court had decided in the case of *Gravesham Borough Council v Secretary of State for the Environment and Another [1983] JPL 306* ("the Gravesham Decision"). The Gravesham Decision explains what was required for a building to constitute a dwelling-house for planning purposes. Again, had the Respondents taken professional planning or legal advice it seems likely to me that they would have been advised that the Outbuilding was a dwelling-house in its own right and that there was no argument that it was in anyway used ancillary to No. 108.
13. I do not consider that the Respondents should be liable for the costs incurred by the Council in arranging for an interpreter to be available at the Inquiry. The Planning Inspectorate wrote to Jack Dominiak on 26 April 2017 and stated that the Council were required to provide an interpreter where one was required.
14. I am aware that the Council's legal representative (Mr Morton) wrote to Jack Dominiak on 5 May 2017 and explained that:

- a) There was no obligation on the Council to provide an interpreter and that this had been confirmed by the High Court.
 - b) The Council were trying to arrange for an interpreter and that they would apply for their costs of doing so against the Respondents.
15. It seems likely to me that the Officer at the Planning Inspectorate who wrote to Jack Dominiak on 26 April 2017 was, at the time he wrote, unaware of the High Court decision referred to by Mr Morton. As far as I am aware the High Court's decision in that case had not been published in any Law Reports. There appears to have been a genuine misunderstanding as to whose responsibility it was to provide an interpreter and therefore I do not consider the Respondents' decision not to provide an interpreter amounts to unreasonable behaviour on their part.

Other Matters

16. I am aware that the Respondents were not happy with the Planning Inspectorate's decision to deal with the appeal by way of a Public Inquiry. Whilst that decision may have increased the costs incurred by both parties it is not a matter that is relevant as to whether the Respondents' behaviour has been unreasonable.

Overall Conclusion

17. I therefore find, for the reasons explained above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. 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 Jack Thomas Dominiak, Marcin Tadeusz Szablinski and Ewelina Szablinski 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:
- a) to those costs incurred by the Council after 14 March 2016, but
 - b) excluding the Council's costs of providing an interpreter for the Inquiry;
- such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The Council is now invited to submit to the Respondents, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Tim Belcher

Inspector