

Costs Decision

Site visit made on 28 June 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 25 July 2017

Costs application relating to Appeal Ref: APP/G5750/C/16/3160930 24-28 Woodford Road, Forest Gate, London E7 0HA

- The application is made by Carla Templer under the Town and Country Planning Act 1990, sections 174 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5), for a full award of costs against the Council of the London Borough of Newham.
 - The appeal was against an enforcement notice alleging a material change of use to a tyre fitting workshop.
-

Costs order

1. In exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to the Town and Country Planning Act 1990 and all other enabling powers in this behalf, the Council of the London Borough of Newham are ordered to pay to Carla Templer the costs of the appeal proceedings described above, such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is invited to submit to the Council of the London Borough of Newham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Reasons for the costs order

3. The application for costs was made on 7 April 2017. It was made within the time limit because the period allowed for comments on the Council's statement had been extended to that date.
 4. The Government's Planning Practice Guidance ("the Guidance") indicates that the parties to an appeal are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, the party may be subject to an award of costs.
 5. It was not essential for the enforcement notice to state what the previous use was in the opinion of the Council, but had it done so officers preparing the notice would probably have paid more attention to the planning history and the appellant would have been in a better position to respond to the notice when she received it. As it was, on receipt of the notice she promptly informed the Council of the planning history, in detail, and asked the Council immediately to
-

identify what the use had changed from. The Council's response was brusque – it simply asserted that the notice had been issued correctly, that the use was unauthorised and that if she disagreed she could appeal.

6. The Council did not in fact clarify their position until they responded to the grounds of appeal in their appeal statement, which was several months later. At this stage, the unreliability of the Council's position became apparent and it transpired that the Council were applying a more exacting standard of proof to the appellant's case than the courts have held to be the correct standard in planning enforcement appeals.
7. The Council's behaviour was unreasonable within the terms of the Guidance for several reasons. They did not carry out adequate prior investigation before issuing the notice; more diligent investigation would have avoided the need to serve the notice in the first place. They failed to co-operate with the appellant when she contacted them after she had received the notice and they delayed well into the appeal process before providing information that should have been available at the outset. This information turned out to be manifestly inaccurate. Finally, by applying the wrong standard of proof they acted contrary to well-established case law.
8. If the Council had acted reasonably the notice would not have been issued, the appeal would not have been made and the appellant would not have incurred unnecessary and wasted expense in the appeal process. I have therefore found that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified. The application has therefore been allowed and the costs order set out above has been made.

D.A.Hainsworth

INSPECTOR