The Planning Inspectorate

# Costs Decision

Inquiry held on 8 August 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: 23 August 2017**

**Costs application in relation to Appeal Ref: APP/E2205/C/16/3160268**
**Land and buildings adjacent to Petworth, Blind Lane, Mersham, Ashford, Kent, TN25 7HA**

- 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 Ashford Borough Council for a full award of costs against Mr Michael William Latter.
- The Inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of land and buildings and operational development.

## Decision

1. The application for an award of costs is refused.

## The submissions for the Council

2. The Council submitted that the Appellant had been given considerable latitude throughout the appeal process. It was the Council's view that the appeal was submitted after the deadline but the Inspectorate accepted the appeal as valid. The Appellant was given additional time to amend his appeal and notice was given that he could make an appeal on ground (a) some five months after the appeal was made.

3. The Appellant chose that the appeal be heard by way of Inquiry but he has not engaged with the Inquiry timetable. No statement of case, no statement of common ground and no evidence were submitted to deal with the merits of the appeal made.

4. The Council submits that this amounts to unreasonable behaviour both procedural and substantive. In particular the ground (d) appeal has been non-existent with the only documents being an undated photograph and receipts that post-date the relevant date. The two witnesses could give no specific timing of events. Without the ground (d) appeal the matter could have been dealt with under the written representation procedure saving the Council the expense of counsel and a consultant.

## The response by Mr Latter (the Appellant)

5. Mr Latter considered that the Council had changed the rules as it went along as he had been told in 2006 when he made the LDC application for the access that the land was not agricultural.

6. He had received the letters from the Inspectorate but he could not read or write and his son, Mr J Latter, had only read some of them. He could not afford professional advice and his previous Solicitor, who had done work for him on a Legal Aid basis, had left the firm and the firm were not prepared to act without payment.

**Reasoning**

7. The Planning Practice Guidance (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[1].

8. Appellants are required to behave reasonably in relation to procedural matters on appeal, for example by complying with the requirements and deadlines of the appeal process[2] and to exercise the right of appeal in a reasonable manner; an Appellant is at risk of an award of costs being made against them if the appeal, or ground of appeal, had no reasonable prospect of succeeding[3].

9. The actions taken by the Inspectorate during the process of this appeal are not matters that can be considered as unreasonable behaviour by the Appellant.

10. It is extremely unfortunate that the Appellant, or Mr J Latter, did not inform the Inspectorate, or indeed the Council during their many dealings with Officers, of the fact that they had literacy problems, or telephone the Inspectorate to seek advice. It is also extremely unfortunate that neither of them sought assistance from people such as their witnesses who were obviously seeking to help them as much as they could in this process. Without any help, professional or otherwise, it is not to my mind surprising that the cases put by the Appellant in support of the legal grounds of appeal (grounds (c) and (d)) had little prospect of success and failed. I note, however, that the Appellant was successful to a limited extent with regard to his appeals on ground (f) and (g).

11. Nevertheless every Appellant is entitled to put his case and to anticipate success and given the Appellant's literacy problems, even though he did not disclose them until the Inquiry, it would have been unfair and unjust for this appeal to have been conducted by way of the written representations procedure particularly with regard to the ground (f) and (g) appeals in which he had limited success.

12. The Rules[4] require that the Council and the Appellant 'shall together prepare an agreed statement of common ground' and, so far as I am aware, neither the Council nor the Appellant prepared any such document. The Inspectorate received an Inquiry timetable from the Appellant, albeit incorrect in places, but no such document was received from the Council as required by Rule 12.

13. I appreciate that the appeals were made and proceeded with by the Appellant with no positive action by him with regard to procedural matters save for the Inquiry timetable and that the Council was not aware of the case being put by the Appellant until the witnesses gave their evidence, but given the Appellant's and his son's circumstances this is not surprising.

[1] PPG Appeals Paragraph 030
[2] PPG Appeals Paragraph 052
[3] PPG Appeals Paragraph 053
[4] The Town and Country Planning (Enforcement)(Determination by Inspectors)(Inquiries Procedure)(England) Rules 2002 No 2685 Rule 16

14. The appeal was made and the Council had to respond to it. It is a matter for the Council how it chooses to present its case. The fact that there was an Inquiry did not, in my view, necessarily mean that a consultant and counsel had to be instructed.

15. The Appellant's behaviour in this appeal fell short of what is expected and required but given his and his family's circumstance I do not consider his behaviour was unreasonable within the terms of the PPG.

**Conclusions**

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Gloria McFarlane*

Inspector