
Costs Decision

Inquiry Held on 10 August 2017

Site visit made on 10 August 2017

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 24 August 2017

Costs application in relation to Appeal Ref: APP/A5270/C/16/3158501 177 Norwood Road, Southall, Middlesex, UB2 4JD

- 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 award of costs against Mr M Taleb.
- The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a separate self-contained dwelling at the rear of the premises.

Summary of Decision: The application succeeds in part. A partial award of costs is made.

The Submissions for the Council

1. There has been unreasonable behaviour by the appellant leading to unnecessary costs to the Council. A full award is justified. His original ground (d) appeal was hopeless. Freely available information shows the building was not built in 2010. A day before the Inquiry the appellant changed his case, suggesting that completion was in 2012. This was also hopeless because Google images and aerial photographs showed the property under construction. Without the ground (d) appeal, a public inquiry and the related expense would not have been necessary. The ground (a) appeal was also hopeless. Persisting with it was unreasonable behaviour. No argument was provided that the building could comply with development plan policies.
2. The appellant had an advisor who wrote on his behalf and his failure to engage with the appeal process should count against him. He failed to submit a Statement, a proof of evidence, a draft Statement of Common Ground or a list of witnesses. This meant that the Council had to guess at his case and prepare for arguments that might have been put. The appellant also submitted new evidence a day before the Inquiry. He introduced a new ground of appeal, ground (f), at a very late stage during the Inquiry.

The Response by the Appellant

3. There has not been unreasonable behaviour. There are similar developments near the appeal site and it is not clear why the Council has chosen to take enforcement action against this building. Receipts related to the work have been provided. Additional evidence only became available at a late stage. The appellant did not know that a ground (f) appeal could be made or that there was the possibility of an award of costs.

Assessment

4. Irrespective of the outcome of an appeal, costs may only 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. The Planning Practice Guidance (PPG) explains that all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. PPG also provides examples of behaviour which may give rise to an award of costs against an appellant. They are not exhaustive but include pursuing an appeal that had no reasonable prospect of success
5. Mr Taleb was informed in a letter from the Planning Inspectorate (PINS) dated 23 November 2016 of the detailed requirements of the appeal process and of its timetable. He was also informed of the costs regime. Nevertheless, as the Council observes, he failed to engage with the appeal process. He did not submit a Statement, a proof of evidence or a draft Statement of Common Ground. He arrived at the appeal with few documents and was not familiar with key documents, including the Council's evidence and the supporting letter submitted with his own appeal form. Mr Taleb asserted that he had not received the Council's proof of evidence but it was sent to him by PINS on 7 June 2017. He referred to having lost some mail. Nevertheless, having lodged his appeal it was for him to engage pro-actively with the appeal process, provide the information required of him and ensure that he obtained the necessary documents, including the Council's evidence against him. There was unreasonable behaviour by Mr Taleb in failing to engage with the appeal process. This left the Council uncertain of the extent of evidence it needed to prepare.
6. Part of Mr Taleb's appeal was that the appeal building was immune from enforcement action (ground (d)). The PINS letter to Mr Taleb, of 19 October 2016, explained the basis for that ground of appeal. The supporting letter of 19 August 2016 submitted with Mr Taleb's appeal form asserted that the building had "been here for in excess of 6 years". At the Inquiry Mr Taleb said he did not recognise that letter and gave a different date for the building's completion. A Google Earth photograph and a Google Street View photograph were submitted in support of the ground (d) appeal. At the Inquiry several receipts and a photograph of a skip were submitted by Mr Taleb. With one exception they did not refer specifically to the appeal property. One receipt did refer to work on the rear annexe at the appeal property but its author, Mr Mughal, did not attend the Inquiry so that his evidence could not be tested.
7. The Council's proof of evidence addressed substantive matters which were likely to refute the claim of immunity from enforcement. This included evidence refuting Mr Taleb's submitted photographs, the Council's own aerial photographs, evidence from Council Tax registration and matters concerning the tenant of the appeal property. Allowing time for Mr Taleb to receive or obtain and consider that evidence, it should have been apparent to him by 16 June 2017 that there was no reasonable chance of his appeal succeeding on ground (d). It was unreasonable of him to continue pursuing the appeal on that ground after that date. The continued pursuit of ground (d) necessitated a public inquiry, with the related additional costs to the Council. Without it, it is likely that the appeal would have proceeded by written representations.

8. With regard to ground (a), Mr Taleb did advance a range of arguments in support of his case. They included the extent and character of other developments in the area, the mixed character of the surroundings, the effect of the development in that context, the absence of visual impact, the benefit of the development to the tenant who had occupied the building and the benefit of providing what he considered to be affordable housing. As the Council observes, Mr Taleb did not engage with the relevant development plan policies. Nevertheless, he put forward matters of substance which might be considered to weigh in his favour with regard to the planning merits of the development. There was not unreasonable behaviour with regard to ground (a) of the appeal.
9. At a very late stage of the Inquiry Mr Taleb introduced a new ground of appeal, ground (f). The late introduction of a new ground of appeal by the appellant was unreasonable. However, the matter was addressed briefly and had it been raised earlier the Council would have had to deal with it in any case. This element of the appellant's unreasonable behaviour did not result in unnecessary cost to the Council.

Conclusion

10. Although Mr Taleb was not legally or professionally represented he had been informed by PINS of the nature of the appeal process and the related requirements. He did not behave reasonably in the appeal process, resulting in some unnecessary costs to the Council. The full award of costs sought by the Council is not justified. However, a partial award of costs is justified. It should be limited to those costs incurred by the Council which arose after 16 June 2017 in connection with the appeal on ground (d) plus those costs which arose as a result of the conduct of the appeal by Public Inquiry rather than by written representations.

Formal Decision and Costs Order

11. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Mr M Taleb shall pay to the Council of the London Borough of Ealing (The Council) the costs of the appeal proceedings in appeal APP/A5270/C/16/3158501, limited to those costs incurred by the Council which arose after 16 June 2017 in connection with the appeal on ground (d) plus those costs which arose as a result of the conduct of the appeal by Public Inquiry rather than by written representations.
12. Such costs are to be assessed in the Supreme Court Costs Office if not agreed. The Public Inquiry was in connection with an appeal against an enforcement notice alleging the erection of a separate self-contained dwelling at the rear of the premises.
13. The Council is now invited to submit to Mr M Taleb, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Williams

INSPECTOR