

Costs Decision

Site visit made on 3 July 2018

by Sandra Prail M.B.A., LL.B (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State

Decision date: 22 August 2018

**Costs application in relation to Appeal Ref: APP/N1920/W/17/3181947
Land at Wyevale Garden Centre, Dancers Hill Road, Bentley Heath, Barnet,
EN5 4RR.**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hertsmere Borough Council for a partial award of costs against GFL Management & Wyevale GC.
 - The appeal was against an enforcement notice issued by Hertsmere Borough Council.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a mixed use as garden centre and car wash facility, including the erection of associated buildings and structure, canopy, fencing and wash screens, the siting of a shipping container and the installation of hardstanding (the unauthorised change of use and development).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of the appeal, 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.
3. The Guidance provides that an Appellant is at risk of an award of costs if the appeal or grounds of appeal had no reasonable prospect of succeeding.
4. The Council claim that the Appellant acted unreasonably in pursuing a ground (c) appeal despite a decision on appeal concerning a certificate of lawful use or development (the CLU appeal). They say they have wasted resources in responding to these arguments.
5. The Appellant says that other than referring to the CLU appeal in its summary of the planning history of the site there was no need for the Council to spend time on the ground (c) appeal and therefore no costs were wasted.
6. In my substantive decision I find that the ground (c) appeal fails. Although I disagree with the Appellant that does not make the decision to pursue the appeal unreasonable. The introduction of new evidence meant that the appeal before me was not entirely on all fours with the previous appeal. In

these particular circumstances I cannot conclude that the appeal had no reasonable prospects of success.

Conclusion

7. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. I conclude that the award of costs sought by Hertsmere Borough Council against GFL Management & Wyevale GC is not justified. The application should be refused.

S. Prail

INSPECTOR