

Costs Decision

Inquiry Held on 5 September 2018

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 24 September 2018

Costs application in relation to Appeal Ref: APP/Y5420/C/17/3179258 45 Crowland Road, London N15 6UL

- 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 Haringey for a partial award of costs against Mr Moses Schwartz.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of a single family dwelling house to 2 self contained flats.
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Decision

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

The submissions for the London Borough of Haringey

2. The costs application was submitted in writing and is Inquiry Document 8, and the Applicant's final comments is Inquiry Document 10. No material additional points were made orally.

The response by Mr Moses Schwartz

3. The response was made in writing and is Inquiry Document 9. No additional points were made orally.

Reasons

4. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
5. The withdrawal of the ground (a), (b) and (c) appeals shortly after the Inquiry opened was unreasonable, and the Council has incurred wasted expense in preparing for the Inquiry to refute these grounds of appeal.
6. The Appellant conceded, shortly after the Inquiry opened and with regard to the ground (d) appeal, his position regarding the ground floor of the appeal property. He introduced, at that point, *Van Dyck v Secretary of State [1993] 1 EGLR 186*, which, his Advocate argued, supported, also on the facts of the case, immunity of the first floor of the appeal property from enforcement action. This late change in the Appellant's position on the ground (d) appeal was unreasonable. The Council incurred unnecessary expense in preparing for the Inquiry on the basis of the Appellant's pre-Inquiry position.

7. If the Appellant's ground (d) position had not changed it would have been possible to hear closing submissions on this remaining ground of appeal on the day of the Inquiry. The change in position made it necessary to provide post-Inquiry time for the Council to consider the case law introduced by the Appellant. The late change in the Appellant's position on the ground (d) appeal was unreasonable for this reason also and the Council has incurred unnecessary expense in consideration of the aforementioned case law post-Inquiry.

8. The Appellant acted unreasonably in withdrawing his ground (a), (b) and (c) appeals shortly after the Inquiry opened. He also acted unreasonably, at the same time, in changing his position in his ground (d) appeal and in introducing case law not previously referred to. To this extent the claim for costs succeeds.

Costs Order

9. 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 Mr Moses Schwartz shall pay to the London Borough of Haringey, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing to refute the ground (a), (b) and (c) appeals at the Inquiry, in preparing for the Inquiry on the basis of the Appellant's pre-Inquiry position on his ground (d) appeal, and in consideration of case law post-Inquiry introduced in relation to that ground of appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Mr Moses Schwartz, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector