
Costs Decision

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 06 January 2020

Costs application in relation to Appeal Ref: APP/A5270/C/19/3221075 2-4 Uxbridge Road, Hanwell, London W7 3PP

- 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 the Council of the London Borough of Ealing for a full award of costs against Mr Anas Kamar.
 - The appeal was against an enforcement notice alleging the material change of use of the premises to a shisha lounge.
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Decision

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

The cases made

2. The Council's case for a full award of costs was included within section 8 of its appeal statement. In short, the Council states that the appellant has no personal knowledge of the appeal property prior to 2015 and, despite being professionally represented, has offered no evidence in support of a ground (d) appeal which was always untenable and should not have been maintained to appeal stage. Pursuing an appeal that has no reasonable prospect of succeeding is an example given in the Planning Practice Guidance where an appellant will be at risk of an award of costs being made against them.
3. The appellant made no response to the application. This prompted the Council to add a failure to engage properly with the appeal process to its reasons for seeking an award of costs.

Reasons

4. The Planning Practice Guidance 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.
5. The appellant has been professionally represented during the appeal process. However, the evidence submitted and the arguments made in the sole ground on which the appeal was proceeding were directed at the requirements of the notice, not the breach of planning control alleged.
6. The burden of proof to the 'balance of probabilities' standard rests on the appellant. In making no case that the use alleged had persisted for a period of at least 10 years prior to the date when the notice was issued, the appeal was bound to fail.
7. As the Council correctly points out, pursuing an appeal in those circumstances is included among the examples of unreasonable behaviour likely to place an

appellant at risk of an award of costs against them. The first limb for an award is therefore made out. The second is clearly also made out since the Council has incurred the entire cost of the dealing with the appeal unnecessarily and has thus incurred wasted expense.

Conclusions

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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. Anas Kamar shall pay to the Council of the London Borough of Ealing, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mr Anas Kamar, 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.

Brian Cook

Inspector