



Costs Decision

Site visit made on 13 February 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2020

Costs application in relation to Appeal A: APP/A2280/C/18/3208574 & Appeal B: APP/A2280/C/18/3208576

Land at 20 - 22 Hillside Avenue, Strood, Rochester ME2 3DP

- 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 Medway Council for a full award of costs against Mr Raj Ram and Dr R Wickham.
 - The appeal was against an enforcement notice alleging 'Without the benefit of planning permission the conversion of the property into 10 self contained flats.'
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Decision

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

Reasons

2. 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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
3. The PPG provides some examples of what could be unreasonable behaviour by an appellant. Although the list is not exhaustive it includes failure to adhere to deadlines including not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties. In relation to withdrawn appeals it advises that a costs award can be made if the appeal is withdrawn without good reason.
4. The enforcement notice was issued on 4 July 2018. The appeal forms were both dated 2 August 2018 and a Hearing procedure was requested. PINS determined, due to the need to test evidence under oath in relation to the ground (d) appeals, that the appropriate procedure was an Inquiry.
5. More Homes Bromley LLP, who purchased most of the building and the front part of the appeal site in February 2019, became the appellant's agent in November 2019. Appeal A was originally made on grounds (a), (d), (f) and (g) and Appeal B was made on grounds (d), (f) and (g). On 3 December 2019 grounds (d) and (f) were withdrawn from both appeals. As a result of the withdrawal of these grounds of appeal the procedure was changed, with agreement, by PINS from an Inquiry to Written Representations.

6. The Council consider that it was unreasonable for the appellants to submit grounds of appeal (d) and (f) to then withdraw them 15 months later. The appellants failed to serve a statement of case or a proof of evidence in accordance with procedural requirements for an Inquiry. The unnecessary expenses comprised costs in preparing for an Inquiry, investigating, taking advice and responding to grounds (d) and (f) of the appeals, due to the failure of the appellants to engage, evidence was produced on matters that were capable of being agreed.
7. More Homes Bromley LLP state that they only became aware of the enforcement notice and proceedings on 8 October 2019. They are acting as agent for the original appellants. In this capacity they consider that there is no basis for a full award of costs and at best the application relates to a partial award of costs. The Council have relied upon the proof of evidence produced for the Inquiry for grounds (a) and (g) that remain. The Council chose to supplement the proof with information pertaining to car parking surveys. The change of procedure afforded the Council an opportunity to produce this evidence missing from its proof. The objection on habitat grounds was capable of being addressed through the imposition of a condition or a tariff contribution.
8. The appellants' agent notes that the evidence produced was necessary for any appeal. Car parking, bin storage and cycle storage could be secured through the imposition of conditions subject to the Council satisfactorily demonstrating the necessity of these matters. The size of the flats provides adequate standard of amenity and there is a mechanism for controlling the level of occupation. There are no substantive grounds remaining for an award of costs.
9. The appellants do not appear to have sought to agree anything with the Council prior to the change of agents in November 2019. The withdrawal of grounds (d) and (f), with a consequent change to procedure, clearly could not have been anticipated by the Council due to lack of engagement by the appellants up until the change of agents. I find that the appellants acted unreasonably in failing to adhere to procedural deadlines.
10. In addition, the appellants failed to agree factual matters common to witnesses of both principal parties prior to the submission of a proof of evidence by the Council. However, in my view, the work undertaken in relation to matters such as housing land supply by the Council allowed agreement to be reached on this matter for the ground (a) appeal. It was necessary for both parties to have considered the evidence referred to in the proof to come to an agreed position. On the evidence I am not satisfied that the failure to agree, prior to the change of procedure, on factual matters led to any unnecessary or wasted costs.
11. In relation to the ground (a) appeal which has been determined through the Written Representation procedure the appellant for Appeal A was not unreasonable to pursue this ground of appeal as the issues were matters of judgement and while I gave different weight to the issues than the appellant, that does not make the pursuit of the appeal unreasonable.
12. In relation to the ground (g) appeals for both Appeal A and Appeal B the pursuit of the appeals was not unreasonable and the compliance period has been increased in the light of the evidence provided by the appellants.

13. 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 partial award of costs is justified.

Costs Order

14. 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 Raj Ram and Dr R Wickham shall pay to Medway Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in instructing Counsel, reservation of the venue for the Inquiry sitting days, advertising the Inquiry, preparation of the Council's statement of case and preparation of the elements of the proof of evidence for grounds (d) and (f); such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Mr Raj Ram and Dr R Wickham, 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.

Hilda Higenbottam

Inspector