
Costs Decision

by Chris Hoult BA(Hons) BPhil MRTPI

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

Decision date: 27 August 2020

**Costs application in relation to Appeal Ref: APP/G5750/X/20/3246849
Indiano Pizza, 126 Upton Lane, Forest Gate, London E7 9LW**

- The application is made under the Town and Country Planning Act 1990, sections 195, 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 Newham for a full award of costs against Mr Mohammed Bashir.
 - The appeal was against the refusal of a certificate of lawful use or development for the existing use of the ground floor as a pizza takeaway (A5).
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Decision

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

Reasons

2. The Government's 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. The Council applies for full costs on the grounds that it has been put to unreasonable expense and that the appellant has not exercised his right of appeal responsibly. It refers to the previous appeal against the enforcement notice issued in respect of the A5 use of the premises and the Inspector's findings on the ground (d) appeal, saying that the appellant appears to have had no regard for this decision. Procedurally, it points to the lack of evidence submitted by the appellant in support of his appeal.
3. In his defence, the appellant says that in dealing with the ground (d) appeal the Inspector did not consider the evidence submitted in support of the LDC application and, with regard to evidence for this appeal, that he wants it to be determined on the evidence submitted to the Council with the application.
4. I found the appellant's submitted evidence in support of the appeal, which I outline in my decision on the appeal, woefully deficient, so much so that in order to understand on what evidential grounds the appeal was being made, I had to turn to the Council's evidence. On any reasonable reading of the Inspector's decision on the ground (d) enforcement appeal, it is plain that he did consider the appellant's evidence for the LDC application, as it was the evidence that the Council referred to in its evidence. That the appellant should go on to ask that this evidence be again considered in the further appeal before me appears to disregard the conclusions to which the Council and then the previous Inspector came and is a wasteful use of the planning appeal process.

5. The appellant was not unrepresented although I have no information as to the qualifications of the agent who pursued his case in the appeal process. It appears that he understood little of the case he was required to make or evidence that should be submitted. This is despite this having been spelled out in the Council's officer's report and the previous Inspector's decision. There is a mix-up in that decision over the January 2018/2019 dates but he will have been well aware that the enforcement notice and the decision in respect of his appeal against it post-dated the LDC application.
6. In spite of that, he did not seek to add further to material that had been firmly rejected as amounting to little or no meaningful evidence in support of his case. In doing so, he persisted with an appeal which had no reasonable prospect of succeeding, in the face of an appeal decision that clearly concluded that the use should not be allowed. The sensible course of action would have been to withdraw this appeal once the outcome of the enforcement notice appeal was known but it has instead been allowed to proceed.
7. The Planning Practice Guidance indicates that appellants will be risk of an award of costs where behaviour such as this occurs and I must therefore conclude that a full award of costs to the Council is justified in this case.

Costs Order

8. 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 Mohammed Bashir shall pay to the Council of the London Borough of Newham 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.
9. The applicant is now invited to submit to Mr Mohammed Bashir, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C M Hoult

INSPECTOR