
Costs Decision

Site visit made on 25 August 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2020

Costs application in relation to Appeal Ref: APP/R5510/C/20/3245776 13 Monmouth Road, Hayes, Middlesex UB3 4JQ

- 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 Mr Bhupinder Dhaliwal for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against an enforcement notice alleging the material change of use of the land to a mixed use comprising a dwellinghouse and use of the land for the sale and commercial storage of vehicles.
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Decision

1. 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 the Council of the London Borough of Hillingdon shall pay to Mr Bhupinder Dhaliwal the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred following the submission of the appellant's statement of case on 15 July 2020, such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Reasons

3. 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. The Guidance also sets out examples of where unreasonable behaviour by a local planning authority may give rise to an award of costs.
4. At paragraph 048 Reference ID: 16-048-20140306 of the Guidance it says that for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
5. In this appeal, the Council's evidence was largely circumstantial, and it is clear that assumptions were made about the scale and nature of the car sales use taking place from the site. However, the appellant failed to engage with the Council properly; the Planning Contravention Notice was returned to the

Council with answers that are at odds with the position argued in the appeal. Specifically, the appellant said that no business was run from the premises, when the appellant's subsequent position was that a business is being run from the property. Other answers were also contradicted by the appellant's subsequent statements. Whilst the appellant says that he was given only 1 day to reply to the Planning Contravention Notice, it is clear from the email from Mr Miah of the Council dated 18 July 2019, that even accounting for the week that the appellant was said to be away, he had over a week to provide a more forthcoming and accurate response. Six days later I note that the appellant asked for a further copy, saying that his had been damaged, but even so, he would have known what the requisition sought, and would have had adequate time to prepare a full and accurate response.

6. This background of outright denial that any business use was taking place was clearly inconsistent with the true position. I consider that the Council had thin, but nevertheless reasonable grounds for it to appear to them that there had been a breach of planning control. I therefore find that the Council did not behave unreasonably in issuing the enforcement notice.
7. In respect of appeals on grounds (c) and (d), the onus of proof lies with the appellant, to be determined on the balance of probabilities. Once the appellant's statement had been submitted, a more detailed portrait of the use of the site emerged. It is relevant that none of the facts put forward by the appellant have been refuted by the Council with evidence, and I consider that it should have been plain to the Council that its case was unsupported by evidence, and it should have considered withdrawing the enforcement notice.
8. The advice in the Guidance is relevant, which says (at paragraph 049 Reference ID: 16-049-20140306) that a planning authority is at risk of an award of costs for not reviewing their case promptly following the lodging of an appeal against the refusal of planning permission. Whilst this is not an appeal relating to the refusal of a planning application, I see no reason why this should not apply to enforcement appeals.
9. 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 made, limited to those costs incurred following the submission of the appellant's statement.

JP Roberts

INSPECTOR