



Costs Decision

Inquiry Held on 17 November 2020

Site visit made on 30 November 2020

by R J Perrins MA MCI TechArborA

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

Decision date: 18 January 2021

Costs application in relation to Appeal Ref: APP/U5930/19/3224485 land at 201 Church Road, Leyton, London E10 7BQ

- 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 Mr Sam Decinger for a partial award of costs against the Council of the London Borough of Waltham Forest.
 - The inquiry was in connection with two appeals and this costs application was in respect of the appeal against an enforcement notice alleging without planning permission, the material change of use of part of the ground floor of the Public House (Use Class 44) designated as an Asset of Community Value into a mixed use comprising of:
 - part retail unit (Use Class 41 - hatched in red in Appendix A),
 - part self-contained residential unit (use Class C3 - shown hatched in green in Appendix A),
 - part communal hallway providing access to residential units (Use Class C3 - shown hatched in pink in Appendix A);(ii) The material change of use of the existing outbuilding from associated ancillary office use with the public house into a self-contained residential unit (Use Class c3).
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Decision

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

Submissions

For the Council

2. The costs application was submitted in writing at the Inquiry. The application seeks a partial award in respect of the withdrawal of grounds (b), (c) and (d) at the Inquiry. The following additional points were made orally:
3. The appellant cannot rely on the flawed argument that he waited to evaluate the Council's evidence before deciding whether to proceed. The burden for the legal grounds is borne by the appellant not the Council. Therefore, the appeal should be founded on the appellant's own evidence not that of the local planning authority.
4. The grounds should not have been brought if there were no facts underpinning them. In this case there was no evidence for the grounds at all. The Council undertook the work regarding the legal grounds of appeal regardless of timing

and the supplementary proof came about because of the appellant's change of mind following the Statement of Case. Then the grounds were withdrawn.

For the appellant

5. The response was made orally at the Inquiry and set out that by withdrawing the grounds of appeal the appellant has saved Inquiry time. That withdrawal demonstrated the ongoing duty of keeping his case under review. In addition, the Council's proofs were delayed a week after the deadline for final submission, and the appellant saw them late. Alongside that is the fact that the Council have submitted one set of appendices for two appeals, so it took time to discern what the Council's arguments were.
6. The application is resisted.

Reasons

7. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
8. There is no dispute that the legal grounds concerning this appeal were withdrawn at the Inquiry and the Council had produced evidence by way of a Statement of Case and written proof for the Inquiry. I am in no doubt that the legal grounds would also have formed part of the Council's preparation for the event.
9. The Guidance sets out the types of behaviour which may give rise to a procedural award against an appellant. The examples set out include withdrawal of an appeal without good reason. Whilst I accept withdrawal of the legal grounds would have saved Inquiry time and that the Council's proofs were delayed that does not justify the late withdrawal.
10. To that end the Guidance is clear and sets out that appellants are encouraged to withdraw their appeal at the earliest opportunity and an award of costs can be made if an appeal is withdrawn without good reason. I do not consider the Council's delayed proofs are a good reason; appellants are responsible for producing their own evidence and the burden of proof in respect of legal grounds lies firmly with the appellant to make their case. In addition, two sets of appendices for two appeals are not unusual.
11. Nevertheless, I recognise the withdrawal of the grounds in this case came out of the ongoing review of the appellant's case, but it was simply too late in the day such that the Council would have incurred unnecessary costs. Furthermore, no good reason has been put forward for withdrawal of those grounds. There is some inevitability therefore that I must find against the appellant in those circumstances and in accordance with the Guidance.
12. For these reasons I 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

13. 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 Sam Decinger shall pay to the Council of the London Borough of Waltham Forest, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to the appeal on grounds (b), (c) and (d); such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Mr Sam Decinger, details of those costs with a view to reaching agreement as to the amount.

Richard Perrins

INSPECTOR