



Costs Decision

Inquiry Held on 9-10 February 2021

Site visit made on 11 February 2021

by Simon Hand MA

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

Decision date: 01 March 2021

Costs application in relation to Appeal Ref: APP/Y5420/C/19/3226931 Unit 4 High Cross Centre, Fountayne Road, London, N15 4QL

- 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 The Council of the London Borough of Haringey for a partial award of costs against Mr Tim Whitehouse.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use to a mixed use comprising residential and live-work accommodation.
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Decision

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

The submissions for Haringey Council

2. The appeal was made in April 2019 on grounds (a), (f), (d), and (g). Two issues were raised that are contentious. Firstly, on ground (d) the appellant argued the site was split into two units, 4a and 4. Unit 4a was an HMO, and had been in use for more than 4 years so was immune from enforcement action. Secondly on grounds (a)/(f) that the site fell within policy area TH11 which was suitable for warehouse living and that unit 4 should be granted planning permission for warehouse living in accordance with policy DM39.
3. No statement of case was submitted and two deadlines for evidence (22 September 2020 and 12 January 2021) were missed with no evidence. Proofs of evidence were finally served on 26th January, some 9 working days before the inquiry opened. It was now obvious the appellant's case had altered substantially. The HMO argument for ground (d) had been dropped and on the ground (a) the appellant now accepted the site was not in TH11, it was not warehouse living but the whole site was a sui generis live-work use.
4. The Council's proofs submitted on 12 January 2021 were thus rendered out of date and further time was allowed for rebuttal proofs. The complete abandonment of various key arguments after 20 months in favour of new arguments so close to the inquiry is "a textbook example of unreasonable behaviour".

The response by Tim Whitehouse

5. The withdrawal of ground (d) was based on an analysis of the Council's evidence, which convinced the appellant the ground (d) could no longer succeed. It is good practice to withdraw grounds before the Inquiry when it becomes clear they will not succeed.
6. In terms of the grounds (a)/(f) the changes made by the appellant in his proof were not such that work already undertaken by the Council to deal with them was wasted. The issues of TH11, warehouse living, loss of employment land etc were still all relevant issues and were discussed in full at the Inquiry.
7. Finally, the appellant himself has not acted unreasonably. He was badly let down by his original planning agent, who determined the initial grounds of appeal. Mr Whitehouse, with no knowledge of the planning system was entirely in the agent's hands. It was only very late in the day that he realised the agent appeared not to have done anything and appointed a new agent, Mr Horne, who appeared at the Inquiry. The appellant has suffered severe economic problems brought about by the pandemic and I should use my discretion to not award costs even if the criteria are met.

The Council's response

8. It is unreasonable to say it was not the appellant's responsibility that his agent was at fault otherwise the costs regime would not work. It is equally unreasonable to argue that costs shouldn't be awarded because the appellant has lost money recently.
9. On ground (d) this is a matter of fact. The appellant should know what he was using unit 4a for. It cannot be characterised as reasonable to withdraw ground (d) when it was blatantly obvious from the beginning that 4a had never been used as an HMO.
10. It is fanciful to say there were no wasted costs for grounds (a) and (f), just because the same policies were in play. Considerable effort went into dealing with the planning unit issue and into why the alleged use was not warehouse living. The new ground (a) was completely different from the original so inevitably new work was required.

Reasons

11. The use of the word "appellant" in a costs or appeal decision is not generally to identify the individual him or herself but is shorthand for "those arguing on behalf of the appellant". So when the Council say the 'appellant was unreasonable to argue...' they do not literally mean Mr Whitehouse, but his team. However, the responsibility for the team remains with the appellant as an individual and if he is let down by other people in his team then that is between him and them. As the Council say, if costs could not be awarded against the appellant because his agent acted unreasonably there would be little point in the costs regime. It is clear that Mr Whitehouse was badly let down by his original agent, who it seems failed to progress the appeal in a timely fashion, if at all, but the responsibility for the Council's costs remains with the appellant.
12. The initial claim under ground (d) that unit 4a had been used as an HMO was clearly untenable from the start and it was unreasonable for any professional

agent to have advanced that argument when all the evidence was quite the opposite. It is true that it is good practice to withdraw a ground when it becomes clear it is unlikely to be successful, but the ground (d) was never likely to be successful. The only evidence provided by the Council was to describe the use as they saw it on their various visits – a use that was in full accord with the appellant's own description.

13. Similarly the site clearly did not fall within policy area TH11 and was not warehouse living as defined in policy DM39. The issue of the planning unit fell away because of the loss of the ground (d) and the change in the ground (a) to the whole site being in use as live/work. It was unreasonable to wait until the 26th January 2021 to make those changes.
14. It seems to me the Council did waste their efforts in dealing with the ground (d), with the issue of the planning unit and the warehouse living argument. This wasted effort was brought about by the very late withdrawal of those arguments by the appellant's team that was in itself unreasonable. I shall therefore award costs against the appellant limited to dealing with those three issues up to the 26th January 2021.

Costs Order

15. 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 Tim Whitehouse shall pay to the Council of the London Borough of Haringey, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the ground (d), with the issue of the planning unit and the argument as to whether unit 4 was warehouse living as defined in DM39; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Tim Whitehouse, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector