
Costs Decision

Site visit made on 25 May 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Costs application in relation to Appeal Ref: APP/A5270/C/20/3258991 Premises known as 94 South Ealing Road, Ealing, London W5 4QB

- 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 Council of the London Borough of Ealing for a full award of costs against Mr Kantilal Shah.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of a basement and land to the rear to a motor vehicle dealership.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG is clear that there is a right of appeal and this is expressly reiterated in respect of enforcement notices. It continues by saying that the parties in appeals are normally expected to meet their own expenses. The PPG says costs may be awarded where a party has behaved unreasonably and it says unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues and examples are given.
4. The Council's application for costs relates to procedural matters and is made on the basis that the appellant has behaved unreasonably by making and pursuing an appeal that had no reasonable prospect of success and by the late withdrawal of the appeals on grounds (b) and (c).

Grounds (a) and (g)

5. I appreciate the Council's concerns since the appellant provided little explanation or justification about how the business currently operates in support of their ground (a) appeal and, their case is essentially based on how they propose to operate, an argument more pertinent to an appeal under ground (f). However, as is evident from my decision, since this use would form part of those matters constituting the breach as stated in the notice, it was open to me to consider the merits of the proposed operation under the ground (a) appeal.

6. The Council had the opportunity to comment on the appellant's submissions and whilst it was unhelpful of the appellant to have provided no defence of their current operation, the appellant sought to exercise his right of appeal to protect his interest in the land and made a case. Although I concluded that planning permission should not be granted, it is not unreasonable for the appellant to have pursued an appeal in the context of their statutory right of appeal.
7. Similarly, whilst the appellant provided little evidence in support of their ground (g) appeal, it was not unreasonable in the context of the consequences for the business to have pursued an appeal on this ground.

Grounds (b) and (c)

8. In enforcement appeals, the onus of proof on matters of fact is on the appellant. The appellant provided no substantive evidence to support these grounds of appeal and despite having been granted two extensions of time for the submission of statements and being professionally represented, failed to withdraw the appeal on these grounds until the final date that statements were due. Consequently, the Council having already prepared their statement, incurred unnecessary expense in responding to these parts of the case.
9. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated but only in respect of certain parts of the appellant's case. In view of the implications and consequences for the appellant, matters probably would have proceeded to an appeal even if the areas where unreasonable behaviour occurred were not pursued. A partial award of costs is justified, not a full award. The partial award should be based on the time spent by the Council defending their decision in respect of grounds (b) and (c).

Costs Order

10. 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 Kantilal Shah shall pay to the Council of the London Borough of Ealing, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing their case in respect of grounds (b) and (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The Council is now invited to submit to Mr Kantilal Shah to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Felicity Thompson

INSPECTOR