



Costs Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

**Costs application in relation to Appeal Ref: APP/A5270/C/20/3246717
Premises known as 2 Coldershaw Road, West Ealing, London W13 9DX**

- 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 Jas Dhami.
 - The appeal was against an enforcement notice alleging the material change of use of the property to a mixed use comprising three self-contained flats and an HMO and the operational development consisting of the construction of a rear extension.
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Decision

1. The application for an award of costs is allowed in-part.

Reasons

2. 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.
3. For its substantive case, the Council highlights that the appellant is represented by a solicitor and architect. It is contended that the ground (c) appeal then had no reasonable prospects of success as a House in Multiple Occupation cannot include flats within it. The appellant himself then failed to attest to the ground (d) appeal and based on the documents submitted the evidence fell short of the standard required. Whilst the appellant could have corrected certain issues, there was then no witness of fact at the Inquiry. It is also contended that the ground (f) and (g) arguments were not developed.
4. For its procedural case, the Council highlights that despite an extension of time to file his statement of case, the appellant did not do so in time. No Proofs of Evidence were then submitted and there was no engagement on the Statement of Common Ground produced by the Council. The day before the Inquiry, the appellant advised he was thinking of withdrawing the appeal but did not do so. On the day of the Inquiry, the appellant's solicitor and architect attended, albeit there were a number of technical issues, and there was no witness of fact, so the event could not proceed.
5. The appellant says that he always sought permission in relation to any delay, and, delays were caused by the pandemic and unforeseen circumstances meaning that relevant evidence could be not collected. He however understands that it was not acceptable. The appellant considers that he had a real prospect for success with his appeal and disputes this application.

6. Whilst I appreciate the basis of the ground (c) argument, there was no reasonable prospect of success given a mixed use, not simply an HMO use, had been enforced against. Given the appellant accepted the mixed use, and was professionally represented, it was on-balance unreasonable to have persisted with that ground of appeal. This led to the Council incurring unnecessary expense in having to continue with its defence.
7. The Inquiry then principally gave the appellant the opportunity to demonstrate on the balance of probabilities that at the time the notice was issued, it was too late to take enforcement action (the ground (d) appeal). He then failed, unreasonably, to take that opportunity which led to the Council incurring wasted expense in preparing its case and attending the Inquiry. Moreover, the appellants written documents fell short of the necessary burden of proof as they could not be tested.
8. I do not however find that the appellant's ground (f) and (g) arguments were not developed. Whilst succinct, the cases made did not amount to unreasonable behaviour, and indeed some success followed.
9. Whilst I also appreciate the pandemic may have caused the appellant some issues, this does not explain why very little evidence was then submitted in accordance with the timetable or why no witnesses of fact were available at the Inquiry, which was held as virtual event. Contrary to the appellants assertions, the Council complied with its requirements to submit documentation at the necessary times.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated aside from in relation to the appellant pursuing the ground (f) and (g) appeals.

Costs Order

11. 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 Jas Dhami shall pay to the Council of the London Borough of Ealing the costs of the appeal proceedings described in the heading of this decision (with the exception of those costs incurred in respect of the ground (f) and (g) appeals), such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Jas Dhami to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul T Hocking

INSPECTOR