



Costs Decision

Inquiry Held on 20-22 July and 28 July 2021

Site visit made on 23 July 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Costs application in relation to Appeals Ref A: APP/R5510/C/19/3235757 and B: APP/R5510/C/19/3235758

Brookside, Moor Lane, Harmondsworth, West Drayton, Middlesex UB7 0AS

- 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 Hillingdon for a partial/full award of costs against the estate of Mr Anthony Hall (deceased) Appeal A: grounds (a), (d), (f) and (g) and Mrs Sheila Hall Appeal B: grounds (d), (f) and (g).
 - The inquiry was in connection with appeals against an enforcement notice alleging the material change of use of land for waste storage and transport incorporating the parking of motor vehicles.
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Decision

1. The application for an award of costs is refused.

Preliminary Matters

2. Mr A Hall sadly passed away after the appeal was lodged. The costs application continues against the estate.
3. The Planning Practice Guidance (PPG) 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 process¹.
4. The costs application was made, and responded to, orally at the Inquiry.

The submissions for the Council of the London Borough of Hillingdon

Ground (a) appeal – partial application

5. The PPG advises that an appellant is at risk of an award of costs if the appeal or ground of appeal had no reasonable prospect of succeeding². This may occur when - (i) the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence; or (ii) the appeal follows a recent decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the

¹ 030 Ref ID: 16-030-20140306.

² 053 Ref ID: 16-053-20140306.

proposal was unacceptable and circumstances have not materially changed in the intervening period.

6. A recent appeal decision³ relating to a very similar development on the same site, made on ground (a) among other grounds, was dismissed. This decision made it plain that development should not be allowed and yet the appellant persisted with the appeal against the enforcement notice on the ground that planning permission ought to be granted for the development in question.
7. The appellant's planning witness did not have the relevant professional qualification, they did not understand nor correctly apply the policies of the National Planning Policy Framework (the Framework), in particular those relating to previously developed land. There was no proper policy evidence. Green Belt policy has remained largely unchanged since that appeal was decided and the decision continues to apply. The case for infill development was put forward "on the hoof" and the case for the alleged very special circumstances was not shown.
8. The ground (a) appeal should not have been made and maintained. It wasted Inquiry time and led to unnecessary costs as the Council had to respond.

Ground (d) appeal – partial application

9. In enforcement appeals, the onus of proof on matters of fact is on the appellant. The PPG makes it clear that an appellant is at risk of a costs award by providing information that is shown to be manifestly inaccurate or untrue, or by deliberately concealing relevant evidence⁴. The ground (d) appeal should not have been maintained given the paucity of the evidence and the lack of documentary evidence. The written evidence was that the yard was commercial and "used by local tradespeople", and there should have been related paperwork, which could have been submitted in evidence. It was further argued that the aerial images held by the appellants' professional witness should have been provided.
10. In addition, the evidence served was not explained, the appellants were ill-prepared despite having had ample notice of the Inquiry. There was inadequate IT, the late submission of the appeal bundle hindered proceedings and the lead witness (Mrs S Hall) was wholly missing with no explanation. Mrs Hall's evidence was necessary as she could have addressed the matters relating to business rates and, furthermore, Mr N Hall explained that his mother did, in fact, know about the activity at the yard.
11. This led to unnecessary or wasted costs in preparing for and attending the Inquiry.

Changing the basis of the appeal – partial application

12. During cross examination of the Council's planning witness, it was suggested that an alternative form of development, comprising limited open storage, should be considered. This would have had the effect of bringing the appeal on a wholly different basis to that brought in evidence and it was unreasonable to raise this with the Council's witness. The PPG advises that an appellant is at

³ Ref APP/R5510/C/00/1038873 dated 17 August 2000.

⁴ 052 Ref ID: 16-052-20140306.

risk of a costs award through the withdrawal of an appeal without good reason⁵.

13. The late introduction of this matter caused wasted expense as the Council prepared a response, should the point have been maintained in closing.

Statement of Common Ground (SoCG) – partial application

14. The PPG advises that an appellant is at risk of a costs award for not completing a timely SoCG or not agreeing factual matters common to witnesses of both principal parties or for a lack of co-operation with other parties⁶.
15. It is maintained that the Council drafted the SoCG one week before the Inquiry. On the morning of the Inquiry, a re-drafted PDF version of the SoCG was received with no track changes. The Council responded immediately by email, seeking an editable version, and received no reply. The Council repeatedly sought a reply to their queries, made in a timely manner, which was not forthcoming.
16. This led to wasted Inquiry time as matters were covered in cross-examination that could have been agreed. This included summarised cases and a map of the area with distances from key features in the vicinity. Wasted expense was incurred in the time taken preparing the SoCG and responding.

Behaviour and preparation of witnesses – partial application

17. The witnesses did not have the evidence available or the tools to find and navigate to the relevant documents, which was unreasonable.
18. The late service of a different bundle, without PDF bookmarks, wasted time and incurred costs due to the Inquiry overrunning.

Grounds (f) and (g) appeals – partial/full application

19. The ground (a) and (d) appeals should not have been brought, as set out above. This leaves only the ground (f) and (g) appeals. The Council made it clear in its Statement of Case, and Final Comments, that a variation to the requirement concerning the fence would be acceptable. The ground (f) appeal need not have been brought, therefore.
20. In view of the above, the only valid ground of appeal was (g) and it would not have been necessary to hold an Inquiry to determine this alone.
21. Persisting with the ground (f) appeal incurred unnecessary or wasted expense examining this matter when agreement could have been reached. The ground (g) appeal need not have been considered by way of Inquiry, which incurred unnecessary expense.

⁵ 052 Ref ID: 16-052-20140306.

⁶ 052 Ref ID: 16-052-20140306.

The response by Mr Anthony Hall (deceased) and Mrs Sheila Hall

Ground (a) appeal – partial application

22. The previous appeal related to a different use, which was clearly a scrapyard including the painting and spraying of vehicles. This is not the same, or very similar, to the current appeal which concerns a fence and storage. Moreover, the appeal was not recent.
23. The appellant's planning witness is a qualified architect and was entitled to give evidence relating to the planning merits of the development. The evidence given orally followed that given in the proof and was not made without warning. This was not unreasonable conduct and did not lead to wasted costs.

Ground (d) appeal and behaviour and preparation of witnesses

24. The accusation that the evidence was manifestly untrue or inaccurate is not accepted. The yard was operated on a non-commercial basis and receipts etc are limited. The appellants' professional witness did not have access to 'Google Earth Pro' at the outset.
25. Mrs S Hall was not substantially involved in the operations at the yard. The lead witness was Mr A Hall, whose proof was converted to a witness statement. Mrs S Hall was not in a position to give evidence but would have had little to add in any case. The failure to give evidence did not lead to unnecessary or wasted expense.
26. The Council's witnesses were supported by the Council and their IT equipment was provided. The appellants did their best with the resources available, and further they relied upon independent witnesses over whom the appellants had no control. Mr Johnson and Mr Hall relocated to areas where IT was more suitable and there was very little disruption, despite Mr Johnson being on holiday and Mr Hall giving evidence from abroad.
27. The complaint about the late submission of the bundle is invalid. The Council did not assist or produce an alternative.

Statement of Common Ground

28. This was unfortunate. The appellants provided a first draft in June, however, the Council's amendments were received only a week before the Inquiry. The appellants responded to this but the Council's reply was limited to three bullet points stating why the draft was not agreed. There was no clear response detailing the amendments sought, which made it difficult to reach agreement.
29. In any event, there is no unnecessary or wasted expense as a result.

Grounds (f) and (g)

30. The Council's concession over the fence is disputed. It only accepted a 1 metre high fence along the highway frontage under permitted development rights. The Council might have conceded the fence had been there for more than four years. The time wasted dealing with the fence arises from the Council's failure to call a now retired Council officer.
31. The Council should have conceded the ground (g) given the circumstances advanced by the appellant.

32. Persisting with these appeals was not unreasonable nor has it led to unnecessary or wasted expense.

Reasons

Ground (a) appeal

33. The PPG is clear that persisting with an appeal on ground (a) against an enforcement notice, where a recent appeal decision relating to the same or very similar development on the same, or substantially the same, site may lead to an award of costs.
34. In this case, there is a relevant appeal decision dating from August 2000 on the same site. The development in question was a change of use to the parking and storage of lorries, repair of vehicles including paint spraying, the storage of waste materials, pallets, skips, wood, metal frames, metal ladders, air conditioning units, tyres, lorry bodies, vehicles and vehicle parts; the siting of a caravan, portable buildings and 2 mobile cranes; and boundary fencing.
35. In my judgement, this is not the same or very similar to the matters alleged in the enforcement notice, since it also includes vehicle repair and paint spraying, and the siting of two mobile cranes. Although Green Belt policy has been consistent since the previous appeal was decided, the effects on openness and/or character and appearance of the previous development compared with that before me would be different.
36. In addition, the appellant made a case that other considerations existed that amounted to very special circumstances. Although I found that the very special circumstances required to justify the development did not exist, the appellant was entitled to make the argument. The appellant's planning witness has a relevant qualification and his arguments were not wholly without merit. As a result, I do not find unreasonable behaviour has been shown.

Ground (d) appeal and the behaviour and preparation of witnesses

37. Although the documentary evidence advanced in support of the ground (d) appeal was relatively limited, it was explained that this was due to the nature of the activity taking place. A number of witnesses came forward to give oral evidence under oath or affirmation. This evidence was disputed and the Council sought to disprove much of what was said using evidence of its own. However, I do not consider that the appellants' evidence was shown to be manifestly inaccurate or untrue. Nor do I consider it unreasonable that the aerial images thought to have been held by the appellants' planning witness were not provided.
38. There was a general lack of preparation by the appellants' that hindered the Inquiry. The witnesses were not properly equipped and had not been provided with the appeal documents in a user friendly manner. The 'virtual' nature of the proceedings led to delays, either due to the time taken for documents to be sent/received electronically and due to issues with technology. Despite this, the Inquiry could have concluded within the time allocated but it was agreed to adjourn to another day. Overall, I do not find that this lack of preparation led to wasted or unnecessary expense.
39. Mrs Hall did not give evidence but I accept that she would not have been a key witness. I do not consider this amounts to unreasonable behaviour.

Changing the basis of the appeal

40. This was a confusing intervention that was advanced very late in proceedings, after the conclusion of the appellants' evidence. It had the potential to lead to a disruptive and lengthy adjournment. As such, I refocussed the cross-examination of the Council's planning witness to the matters alleged in the enforcement notice and directed any further discussion on limiting the development to that which could legitimately be controlled through the use of planning conditions. The point was not pursued and, as a result, there was little Inquiry time spent on this matter. I do not find wasted or unnecessary expense has been shown.

Statement of Common Ground

41. Regulation 16⁷ requires the local planning authority and the appellant to prepare and agree a SCG. In this case, no such document was agreed and the parties accuse each other of a lack of cooperation. It may be that a SCG would have assisted. It seems that the document would have included summarised cases, areas of dispute and agreements of the nature of the surrounding area. While this would have been helpful, I consider it unlikely that Inquiry time would have been saved.
42. The failure to agree a SCG was disappointing but I do not find this amounted to unreasonable behaviour that can be attributed solely to that of the appellants.

Ground (f) and (g) appeals

43. The ground (f) appeal was pursued despite the Council's indication that it would accept a variation to the requirements to allow a fence that would fall within development permitted under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the Council acknowledged that I may find the fence to facilitate the unauthorised use. It is not apparent that the appellants persisted with the appeal for this reason, but in any event, it was not guaranteed that I would accept the matter even if agreement were to be reached. Hence, I do not consider it unreasonable on the part of the appellants to pursue this appeal.
44. The ground (g) appeal could have been dealt with simply by written representations, should the other grounds not have been pursued. However, and I do not consider this amounts to unreasonable behaviour. In addition, the overall time spent responding to this ground was likely to have been minimal.

Conclusion

45. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore

Inspector

⁷ SI 2002/2685.