



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 estate of Mr Anthony Hall (deceased) (Appeal A) and Mrs Sheila Hall (Appeal B) for a partial award of costs against the Council of the London Borough of Hillingdon.
 - 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. The first appellant sadly passed away after the appeal was lodged. The costs application continues on behalf of 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 process.
4. The costs application was made, and responded to, orally at the Inquiry.

The submissions for Mr A Hall (deceased) and Mrs S Hall

5. The 'Google' images submitted by the Council at the start of proceedings led to a lengthy adjournment. The images could have been considered prior to the Inquiry because the evidence was available. To say otherwise is not valid. The Council should have made efforts to obtain the images in time for the evidence to be incorporated in the bundle. Further time was wasted as the images were submitted in multiple formats. The resulting delay amounted to about two hours. It is likely that the Inquiry would have concluded in three days and would not have overrun if the information had been submitted earlier.

The response by the Council of the London Borough of Hillingdon

6. The evidence was not available prior to the Inquiry because the Council did not have the necessary subscription. The appellants' planning adviser did have the relevant subscription and they could have produced and shared the images, given their equal duty to assist the Inquiry and the burden of proof being firmly

with the appellant. The aerial images submitted by the appellants were either inaccurately dated or selective in coverage.

7. The submission of the images at the start of the Inquiry was not unreasonable conduct. The images were submitted to assist the Inspector, the vast majority were the same or similar, and from comparable dates, to the images already submitted in evidence, albeit sharper and cleaner. There is no prejudice as the appellants should have known what was on site and at what time. The images were resubmitted in a dated bundle as this was a faster and easier tool.
8. Later images from Council files were submitted in response to a point made by the appellants about the accuracy of the image dates, and further to the appellants overlay image.
9. The adjournment to consider the images was not two hours as it incorporated the lunch adjournment. The additional half hour was due to the documents being sent electronically and due to the file size. It is not true that the likelihood is that the Inquiry would have concluded in three days. The adjournment to a fourth day was by agreement. Shorter closing submissions could have been heard on day three, if necessary. The delays resulted from the behaviour of the appellants' witnesses who were not properly briefed or prepared and lacked the necessary technology to participate fully. Also, time was spent responding to selective evidence, for example, document AH4 which was incorrectly dated.

Reasons

10. The Council notified the Inquiry of the 'Google Pro' images on the first morning. In line with standard procedure, I advised that the other party could apply for costs [if the behaviour is unreasonable and led to unnecessary or wasted expense]. The images were accepted as I was persuaded that the evidence was relevant and that it would assist the Inquiry. This proved to be the case as the images were clearer than the images submitted with Proofs. The evidence was not complex and the time taken to assess and assimilate the images was minimal.
11. Although the adjournment affected proceedings on the first day, this was not the sole reason why the Inquiry overran. 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. Crucially, the decision to adjourn to a fourth day was taken by agreement. The Inquiry could have concluded in three days but I considered it would be more helpful to allow time for considered closing submissions, in writing. The extended timetable was not solely due to the late submission of evidence by the Council.

Conclusion

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

Debbie Moore

Inspector