



Costs Decision

Inquiry Held on 10 March 2021

Site visit made on 23 July 2021

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Costs application in relation to Appeal Ref: APP/G5180/C/19/3219739 Paxton Arms, 52 Anerley Hill, Anerley, London SE19 2AE

- 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 Bromley for a partial award of costs against AMM Developments Ltd.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of basement from use as a retail unit (use class A1) and a single self contained flatted dwellinghouse (Use Class A3), to use as a retail unit (Use Class A1) and two x one bedroom self-contained flatted dwellinghouses (Use class C3).
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Decision

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

The submissions for the Council of the London Borough of Bromley

2. The application was made in writing following the inquiry.

The response by AMM Developments Ltd

3. The respondent has made no response to the application.

Reasons

4. 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.
5. The appeal was not initially accompanied by any Grounds of Appeal. These were not submitted until a couple of months after the appeal was lodged. Furthermore, a plan of the basement of the building was not submitted until approximately 12 months after the appeal was lodged, at which point the appeal procedure was changed from written representations to an inquiry.
6. The respondent provided no witness statements until 8 March 2021, two days before the inquiry. These did not include a witness statement from the respondent themselves. It was also only at this point, two days before the inquiry, that the respondent identified the two witnesses they would be calling upon. It was only during the inquiry that the respondent's director decided to act as a witness too. This gave very little opportunity for the applicant to prepare their cross examination of the witnesses, in particular the respondent's director as his evidence was unknown. Nevertheless, for the sake of expediency they agreed to proceed without adjournment.

7. This resulted in difficulties during the inquiry as it was not always apparently clear whether the parties were referring to the same documentation. Furthermore, a significant amount of time was spent cross examining the respondent's director as his evidence under solemn affirmation introduced a new allegation that the two basement flats had been in situ when the respondent bought the property. This clearly contradicted the evidence submitted in the respondent's grounds of appeal, which stated that the two flats were created in 2014.
8. There is no procedural requirement for the respondent to submit a proofs of evidence. However, had they done so, this would have saved a substantial amount of time during the inquiry and allowed the applicant to properly prepare their case. As a result of this, there was not enough time during the inquiry to submit closing submissions. Consequently, the closing submissions were prepared and submitted in writing following the inquiry.
9. The applicant also contends that they invited the respondent to prepare a statement of common ground on numerous occasions. Whilst a statement was submitted, it was not a statement of common ground but merely a reiteration of the respondent's case. As such, it was subsequently returned to them. A statement of common ground could have prevented the need for some of the discussion during the inquiry, with particular regard to the layout, character and use of the site prior to the respondent's ownership.
10. Taking all of the above matters into consideration, the respondent's behaviour throughout the appeal process was unreasonable and caused unnecessary delays to the proceedings and potentially prejudiced the Council's case. However, an award of costs can only be awarded if this unreasonable behaviour has resulted in unnecessary or wasted expense in the appeal process.
11. The only evidence before me as to how any unnecessary or wasted expense has been incurred is with regard to the change of procedure following the respondent's delayed submission of the plan indicting the layout of the basement flats, which resulted in the applicant having to prepare an updated statement to reflect this plan. The only other evidence of unnecessary expense is the time needed following the inquiry for the applicant to prepare and submit closing submissions, which otherwise could have been done on the day of the inquiry had the respondent's case been clearer through the submission of proofs of evidence. The remaining unreasonable behaviour I have identified does not appear to have resulted in the applicant carrying out any materially additional work than they would normally have been required as part of the appeal process.
12. The respondent has acted unreasonably and as a result the applicant has incurred wasted expense. The application for a partial award of costs thus succeeds. Costs are limited to those incurred from the preparation of the updated statement of case and in the preparation of the closing submissions after the inquiry was held.

Costs Order

13. 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 AMM

Developments Ltd shall pay to the Council of the London Borough of Bromley, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred from the preparation of the updated statement of case and in the preparation of the closing submissions after the inquiry was held.

14. The applicant is now invited to submit to AMM Developments Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander Walker

INSPECTOR