



Costs Decision

Site visit made on 9 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Costs application in relation to Appeal Ref: APP/T5150/C/20/3245160 Land at Flats 1-6, 51 Nutfield Road, London NW2 7EA

- 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 Brent for a full award of costs against Mr Yehudah Rothchild.
 - The appeal was against an enforcement notice alleging, without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats, and the erection of a single storey rear extension.
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Decision

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against an appellant. These examples include delay in providing information or other failure to adhere to deadlines.
2. The Council considers that information provided in the appellant's Final Comments, such as tenancy agreements, was relevant to this appeal from the outset and would have made the Council's consideration of the appeal easier. Given that the appeal is based on legal grounds, placing the burden of proof on the appellant, the Council considers that it was unreasonable to withhold such information only to offer it at a stage that would prolong proceedings. The Council contends that it has been forced to provide limited information available to it, at much greater effort and has been put to unnecessary expense as a result.
3. As indicated in my Decision, the appellant failed to provide his Statement of Case within the required timescale. The appellant's Final Comments were then turned away as seeking to introduce new evidence. In these situations, the evidence is returned to the appellant without being forwarded to the Inspector. It follows that I have not seen the appellant's Statement of Case or his Final Comments. This meant that the only evidence in support of the appellant's case before me was that briefly stated on the Appeal Form itself, albeit many of the facts on which I relied in my Decision were contained in the Council's Statement of Case.

4. The appellant's primary response to the Council's application for costs is that it is impossible for an appellant to predict in advance what the Council's case may be. However, this ignores two key facts.
5. Firstly, the right of appeal is given to the recipient of the enforcement notice. Not the Council. It is for the person exercising the right of appeal (the appellant) to choose the grounds on which the appeal is made. It is then incumbent upon the appellant to submit, in a timely manner, such evidence as he feels necessary to substantiate the chosen grounds of appeal. This is particularly true of the 'legal' grounds of appeal on which the appeal was partly made, in which the burden of proof falls squarely on the appellant.
6. Secondly, the appellant's response ignores the fact that he actually did seek to submit his Statement of Case before having sight of the Council's case. That it was turned away as being out of time does not disguise that fact. For that reason alone, the appellant's position is wholly untenable.
7. The simple truth is that the appellant (through his agent) failed to submit his Statement of Case in a timely manner. The appellant's failure to adhere to that deadline then resulted in an unsuccessful attempt to introduce that evidence at Final Comments stage. That evidence was rightly turned away.
8. The Planning Practice Guidance is clear: the failure to adhere to deadlines constitutes unreasonable behaviour that may put an appellant at risk of an award of costs against him. I am satisfied that appellant did act unreasonably in this respect.
9. The Planning Practice Guidance is also clear that costs may be awarded against a party who has behaved unreasonably, irrespective of the outcome of the appeal. In this case, and notwithstanding the appellant's failure to provide evidence in a timely manner, the appeal succeeded. This was down to the application of secondary legislation and the interpretation of a judgment of the High Court handed down after the deadline for the exchange of evidence¹. The fact that the appeal was allowed is therefore not a bar to the award of costs against the appellant in this case, provided that the other requirement set out in the Planning Practice Guidance is met: namely, that the unreasonable behaviour caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. In that respect, the Council indicates that it has been forced to provide limited information available to it, at much greater effort and has been put to unnecessary expense as a result that. Unlike the appellant, the Council did produce a Statement of Case in a timely manner. It is a lengthy document, running to some nine pages of detailed evidence. A significant proportion of that document is devoted to setting out the basics of the Council's case, before moving on to respond to the specific grounds of appeal on which the appeal was made. There are then thirteen Appendices including, I note, a tenancy agreement.
11. The salient point, however, is that this evidence was submitted at Statements stage. At that point in time, the Council was unaware of what evidence may or may not have been provided by the appellant in his Statement of Case. It had to present its case on the basis of grounds of appeal set out in the Appeal

¹ On which the comments from the main parties were invited and received.

Form. In the event, the appellant did not provide his Statement of case in accordance with the deadline. But by that time, the Council had already produced its evidence. It therefore matters not what evidence the appellant's Statement of Case may or may not have contained: the Council had already incurred time and expense in preparing its evidence. Moreover, given that the appellant's Statement of Case had been turned away, the Council did not provide any Final Comments on that evidence. The appellant's Final Comments were turned away and did not prolong proceedings. Neither did the Council incur any expense responding to those Final Comments

12. Consequently, the Council did not incur any wasted or unnecessary expense in preparing its evidence. It follows that both criteria required for an award of costs have not been met, such that an award of costs against the appellant is not justified.

Paul Freer
INSPECTOR