



Costs Decision

Hearing Held on 25 March and 23 April 2021

Site visit made on 6 January 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13th September 2021

Costs application in relation to Appeals Ref: APP/J1535/C/20/3251175 and APP/J1535/C/20/3251175

The Stables, Old Waterworks, Green Lane, Nazeing, Waltham Abbey EN10 6RS

- 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 Karl Canwell for a partial award of costs against Epping Forest District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging the conversion of a former stable and the erection of an extension to the stable and a planning appeal in relation to the stables as extended and their use
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant alleges that the Council acted inconsistently in relation to the planning application which in turn led to extra grounds being pursued under the enforcement notice appeal. The appellant believes that the unreasonable behaviour of the Council has meant that the appellant has had to appeal the enforcement notice under grounds (b),(f) and (g) in addition to ground (a).The applicant clarified at the hearing that a claim was not being made in respect of ground (a) as the appellant would have, in any event, lodged the appeal against the planning application refusal.
4. After the refusal of the planning application but prior to the service of the enforcement notice, the appellant was told that the enforcement notice would seek removal of the entire building. Significantly, the applicant pointed out to the Council the differences between the use of the building, the principle of having a building and the extension. The Council was clearly aware, therefore, prior to the service of the notice that the applicant had issues about what the notice was intended to cover and did not consider that it was appropriate for the notice to cover the whole building. However, despite being aware of these issues, the notice did not adequately address them and the notice was

quashed. Essentially, the Council had a choice to either address the use or operational development or both, but needed to make those choices clear, support them with reasons and have requirements which flowed from the notice.

5. I do find that the lack of clarity in those fundamental matters, particularly given the history of the discussions about the planning application when the matters were highlighted by the appellant as stated in their costs claim does constitute unreasonable behaviour on the part of the Council with has led to the appellant having to incur unnecessary expense in addressing grounds other than ground (a) which they would not necessarily have pursued, had the notice been clear rather than not capable of correction without injustice.
6. The Council's response is brief at four paragraphs and refers only to the unnecessary cost of a ground (f) appeal. The Council says it was within its rights to pursue the demolition of a residential building and did not give pre-application advice. Nevertheless, that requirement to demolish did not match the alleged breach of planning control which was both confusing and unreasonable and resulted in the additional grounds of appeal over and above the ground (a) appeal as the appellant was appealing the planning refusal in any event.
7. The Council have acted unreasonably and the appellant has incurred unnecessary expense in having to pursue additional grounds (b)(f) and(g) with regard to the enforcement notice appeal. The claim for a partial award of costs thus succeeds.

Costs Order

8. 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, IT IS HEREBY ORDERED that Epping Forest District Council shall pay to Karl Canwell, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in bringing appeals under grounds (b) (f) and (g) in respect of the enforcement appeal.
9. The applicant is now invited to submit to Epping Forest District Council details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

E. Griffin

INSPECTOR