



## Costs Decision

Site visit made on 17 January 2022

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 February 2022**

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### **Costs application in relation to Appeal Ref: APP/A5270/C/21/3267410 Ground Floor Right, 40 Bideford Avenue, Perivale, Ealing UB6 7PY**

- 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 Ealing for a full award of costs against West Middlesex Motor Company Ltd.
  - The appeal was against an enforcement notice alleging the material change of use of land to use as car sales.
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### **Decision**

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

### **Reasons**

2. 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. Awards against a party may be either procedural or substantive.
3. An appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding, relating to the substance of the matter. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations such as national policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
4. The evidence provided by the appellant is limited and relates, in part, to a different site. The appellant does not explain the relevance of the historical use of the other site, nor does the appellant seek to explain what the historical use of the appeal site is or how this is relevant to the appeal. As can be seen from the appeal decision, I have agreed with the Council and found the development is not in accordance with the development plan.
5. The PPG is clear, the right of appeal should be exercised in a reasonable manner. The appellant's case is limited and ambiguous, with inadequate supporting evidence and no national policy advanced to suggest the decision should have been made otherwise. As the Council points out, the appellant is professionally represented. Were this appeal lodged by an unrepresented appellant, the provision of such limited information may be understandable. Consequently, I consider the appellant has not exercised its right of appeal in a reasonable manner, which is unreasonable behaviour.
6. Appellants are also required to behave reasonably in relation to procedural matters on the appeal, for example, by complying with the requirements and

deadlines of the appeals process. The PPG advises that delay in providing information or other failure to adhere to deadlines is an example of unreasonable behaviour.

7. Although the appellant has not submitted an appeal statement, grounds and facts were set out within the appeal form and evidence in the form of aerial photographs was also provided when the appeal was submitted. While the appellant was able to submit a statement if it needed to add details to its appeal, procedurally, it was not obliged to do so.
8. The appellant has not sought to provide evidence after the relevant appeal deadlines and so, in terms of procedural matters, I cannot agree that the appellant has behaved unreasonably in this regard. Nevertheless, I have found that the appellant has not exercised its right of appeal in a reasonable manner. This is unreasonable behaviour which has resulted in the Council incurring wasted expense in responding to the appeal.

### **Conclusion**

9. For the reasons set out above, I find that unreasonable behaviour by the appellant, resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

10. 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 West Middlesex Motor Company Ltd shall pay to the Council of the London Borough of Ealing, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to West Middlesex Motor Company 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.

*M Savage*

INSPECTOR