



Costs Decision

Inquiry Held on 8 March and 12 April 2022

Site visit made on 7 March 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Costs application in relation to Appeal Ref: APP/T5150/C/21/3278357 Land at 16 Orchard Close, Wembley HA0 1TZ

- 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 London Borough of Brent for a partial award of costs against Mr Saiyed Hanif.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the material change of use of the premises from residential to a mixed use as residential, car repairs and the storage of broken vehicles, and, without planning permission, the demolition of the front boundary wall, the formation of an access onto a highway and the creation of a parking area to the front of the premises.
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Decision

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

The submissions for London Borough of Brent

2. The application was submitted in writing and expressed orally at the Inquiry. The Council contend that a partial award of cost is justified because of:
 - the introduction of a new ground of appeal at statement stage;
 - delaying or failing to provide documents he had stated he would be submitting when making his appeal, and failing to respond to the Council's Statement and third party representations which complicated preparation for these proceedings and prolonged them putting the Council at unnecessary expense;
 - providing information that is manifestly inaccurate or untrue in relation to events at the appeal premises which complicated preparation for these proceedings and prolonged them putting the Council at unnecessary expense;
 - refusing to engage with the Council in the preparation of a statement of common ground or in any other respect in the conduct of this appeal which has complicated preparation for these proceedings and thus prolonged them putting the Council at unnecessary expense; and
 - refusing to accept that the burden was on the appellant to prove his case. Refused to provide specific and unambiguous evidence of the use of the

appeal premises either through documents or orally. Offered no explanation for the Council's or third party evidence or his responses were facetious. The proceedings were consequently prolonged, and the Council put to unnecessary expense.

The response by Mr Saiyed Hanif

3. The response was made solely by oral submissions. The substance of the response is as follows:
 - the documents referred to in the appeal submissions were to be in relation to the appeals made in relation to the two enforcement notices for Orchard Close. However only one of those appeals was accepted as valid by the Planning Inspectorate;
 - the documents requested/disclosed by Brent Council in relation to the appeal site dated back to 1933, and for the garage, April 1981. The appellant paid Brent Council for this information;
 - based on the adjudicator's judgement deadlines were met. Requested an extension of time and there has been no detriment to the Council in terms of costs;
 - Brent Council brought action without evidence and officers involved in instigating the enforcement notice did not appear at the Inquiry to give evidence.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. In the normal course of events, statements of case should be submitted within 6 weeks of the appeal start date and in this case that would have been by 15 November 2021. On 18 November 2021, the Appellant requested an extension of time for submission, his reasons being that the appeal was not to be heard until 8 March 2022 and that he was still awaiting full disclosure from Brent Council on this matter. The request was refused by the Planning Inspectorate as requests for extensions should be made ahead of the deadline and only in exceptional circumstances.
6. The Council produced its statement of case on time and no final comments on this statement were submitted by the Appellant.
7. Proofs of evidence should be submitted 4 weeks in advance of the start of the Inquiry and in this case that would have been by 8 February 2022. No proof of evidence was submitted by the Appellant. On 10 February 2022 the Inspector sent out a pre-inquiry note setting out the evidence which had been received to date, and giving the Appellant the opportunity to submit particulars of his case by 22 February 2022. Those particulars were provided by the Appellant via Brent Council within that time period.
8. There is no doubt that the Appellant failed to keep to the appeal timetable. However, there is no obligation on the Appellant to submit a statement of case or proof of evidence. The only documentary evidence produced by the

Appellant during the appeal process was a short Witness Statement dated 20 February 2022, with appendices which consisted of documents disclosed to him from Brent Council. The Council do not clearly indicate how the late submission of the Witness Statement and documents, or the failure of the Appellant to engage with them in producing a statement of common ground or the appeal proceedings caused it to incur unnecessary expense.

9. I appreciate that the appeal proceedings were prolonged. It was necessary to adjourn the Inquiry to a later date as the Appellant claimed he had not received any of the Council's evidence. However, it was my decision to allow an adjournment. Unfortunately, it was clear that the Planning Inspectorate had not provided all copies of correspondence by post, despite the Appellant having clearly stated that this was his preferred method of communication. In the interests of fairness, I was obliged to give the Appellant the benefit of the doubt and adjourn to allow him time to consider the evidence before him. In the event the Appellant did not provide any further documentary evidence and relied on responding orally to the evidence at the Inquiry. However, the Appellant was not obliged to submit a response in writing, and the Council do not make it clear how the absence of a response in writing resulted in them incurring unnecessary expense.
10. With regard to ground (b). The appeal form indicated that the appeal was to be made on ground (d). However, Part G.2 of the form indicated that the Appellant did not consider that planning permission was required for the development as he believed there had not been a change of use of the premises. Furthermore, the Appellant's witness statement stated that no car repairs had taken place at No 16 Orchard Close. The Inspector has a duty to be alert to and deal with any 'hidden' grounds of appeal, in particular where an Appellant is unrepresented. My pre-inquiry note set out that the Appellant's case included a ground (b) point and this was confirmed at the Inquiry. The Council stated at the Inquiry that there would be no prejudice to them by my consideration of ground (b). Furthermore, I found on ground (b) that vehicle repairs had not taken place on the Land, and that the notice should be corrected to remove this element of the alleged mixed use. It was not therefore unreasonable of the Appellant to pursue ground (b).
11. I recognise that the Appellant's documentary evidence was sparse and that his answers in cross-examination were at times flippant. However, whilst his manner and approach to the appeal proceedings were at times unreasonable, I am not persuaded that his behaviour resulted in the Council incurring any unnecessary expense during the appeal process.

Conclusion

12. For the reasons given, I conclude that although some of the actions and behaviour of Mr Hanif were unreasonable, the Council did not incur any unnecessary expense in the appeal process as a result of them. No award of costs is therefore justified.

Elizabeth Pleasant

INSPECTOR