



Costs Decision

Site visits made on 14 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Costs application in relation to Appeal Ref: APP/T5150/C/21/3272594 232-234 Kingsbury Road, Kingsbury NW9 0BH

- 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 for the London Borough of Brent for a partial award of costs against Mr T Thevarajah for Marco Polo Properties Ltd.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a smoking shelter/wooden structure to the rear of the premises.
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Decision

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

Preliminary Matters

2. The partial costs application by the Council relates only to the appellant company's arguments about the validity of the enforcement notice as well as the appeal on grounds (c) and (d).

Reasons

3. 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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The right of appeal should be exercised in a reasonable manner and an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.

Validity

4. The appellant in their initial grounds opined that the way in which the site was shown on the plan that accompanied the enforcement notice was imprecise. I disagreed with that in my decision. I found the appellant's arguments unclear, unconvincing and unsubstantiated. This affected the way in which the appellant pursued the remainder of the appeal. In my view the notice was clear and the suggested flaws with it were rather contrived which affected the focus of the remainder of the grounds of appeal.

Grounds (c) and (d)

5. Under these ground the onus of proof on matters of fact is on the appellant.

The Council had presented evidence that demonstrated that the fire that had affected a previous smoking shelter had caused such damage that what exists is a new building. The appellant did provide evidence of a structure having been in place for more than 4 years. That was within the statutory declaration submitted with the appeal which had previously been sent to the Council prior to the issuing of the notice. That document presented 2 snapshots in time. The first is what had been previously constructed. The second is what existed after some work had commenced following the fire. There was no evidence from the appellant about which, if any, parts of the old structure had been incorporated within the structure as it stands now.

6. The appeal on ground (c) relied upon my reaching a judgement as a matter of fact and degree but the facts as presented by the Council seemed clear and the appellant did not present evidence that credibly disputed them. That ground of appeal did not stand a reasonable chance of success. Directly related to that, the appeal on ground (d) did not either because there was no dispute about the date when the previous structure had been subject to a substantial fire.

Wasted expense

7. An appeal in this case was likely because the Council and the appellant were not likely to agree on the planning merits as dealt with under ground (a) and the deemed planning application. I consider that the structure is acceptable on its merits and have granted planning permission for it. Much of the work carried out by both main parties would have been undertaken anyway whether or not the arguments about the validity of the notice as well as the appeal on grounds (c) and (d) were pursued.
8. However, the Council will have spent a significant amount of time considering the appellant's arguments and addressing them. The appeal documentation would have been far simpler to understand and therefore comment upon had there not been the distractions of unsubstantiated technical arguments and consequent grounds of appeal that had no reasonable chance of success.

Costs Order

9. 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 Mr T Thevarajah for Marco Polo Properties Ltd shall pay to the Council for the London Borough of Brent, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to arguments about the validity of the enforcement notice as well as the appeal on grounds (c) and (d); such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Marco Polo Properties Ltd, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Harwood

INSPECTOR