
Costs Decision

Site visit made on 9 May 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2022

Costs application in relation to Appeal Ref: APP/A5270/C/20/3262264 Land at 145 Wood End Gardens, Northolt UB5 4QW

- 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 Council of the London Borough of Ealing for a full award of costs against Mr Joginder Khaira.
 - The appeal was against an enforcement notice alleging, without planning permission the material change of use of the original main dwelling to two self-contained flats and the construction of a self-contained residential dwelling at the rear of the ground floor of the property.
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Decision

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

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.
3. The Local Planning Authority submit that the appellant has acted unreasonably by failing to submit an appeal statement or any evidence to justify lodging the appeal. Consequently, the Council has had to defend a case which they consider it was unreasonable for the appellant to lodge, and which had no reasonable prospect of succeeding. A full award of costs is sought in relation to the planning and administrative costs incurred in defending the appeal.
4. The PPG advises that an appellant is at risk of a procedural award of costs if he delays in providing information or other failure to adhere to deadlines.¹ Furthermore, an appellant is at risk of a substantive award being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. For example, in enforcement appeals, the onus of proof on matters of fact is on the appellant.²
5. In this case the appeal was brought on ground (c), and a hidden ground (b) was identified. The burden of proof on those legal grounds is on the appellant. The appellant's grounds of appeal were set out on the appeal form where it was stated that he believed he had converted the property into an HMO and that

¹ PPG Paragraph: 052 Reference ID: 16-052-20140306

² PPG Paragraph: 053 Reference ID: 16-053-20140306

those works constituted permitted development. No further statement of case was provided, nor any final comments made in relation to the Council's Statement of Case.

6. Although there is no obligation on the appellant to submit a statement of case, the onus of proof is on him to make out his case. In this appeal the appellant did not provide any evidence to support his case. Moreover, the Planning Contravention Notice (PCN) he completed prior to the Council issuing the enforcement notice clearly demonstrated that the works undertaken were those alleged in the notice. To lodge an appeal on the grounds that the works hadn't taken place as a matter of fact was therefore unreasonable and contradictory. Furthermore, the ground (c) was made in relation to the appellant's assertion that the property was in use as an HMO, which was clearly not the case.
7. I appreciate that the appellant may have undertaken the works in ignorance of the necessity to firstly obtain a grant of planning permission. However, in completing the PCN the appellant indicated that he was now seeking professional advice.³ The PPG makes it clear that 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. From the evidence before me, and in the absence of any substantive evidence from the appellant to support his case, it was unreasonable of the appellant to exercise the right of appeal on the grounds submitted when they clearly had no reasonable prospect of success.
8. For the above reasons, I find that unreasonable behaviour by the appellant, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 Joginder Khaira shall pay to the Council of the London Borough of Ealing, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mr Joginder Khaira, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR

³ Appendix 9 of LPA Statement of Case.