



Costs Decision

Hearing Held on 14 September 2021, 2 & 3 March 2022

Site visit made on 4 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022.

Costs application in relation to Appeal Ref: APP/C5690/W/20/3254911 Willow Tree Riding Establishment, Ronver Road, London SE12 0NL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Baring Trust for a partial award of costs against Austringer Estates Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for the development described as Full application for the demolition of existing buildings, provision of replacement equestrian facilities, landscaping, and associated access.
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Decision

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

The submissions for the Baring Trust

2. The Baring Trust is of the view it has been put to unnecessary and wasted expense by the appellant due to the adjournment of the hearing on 14 September 2021 at short notice, and through having to respond to an application for costs against them, which it describes as being wholly without merit.

The response by Austringer Estates Ltd

3. Austringer Estates Ltd advises it was unaware of any issues leading to the loss of its ecologist and given the late notice it was given, it explored all available avenues to provide an ecological witness. It considered it essential and necessary to provide an ecology witness given the submissions of the Baring Trust. It is of the view that its costs should be met insofar as it had to provide expert witnesses to attend the hearing to provide evidence against unjustified issues raised by the Baring Trust.

Reasons

4. Paragraph 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Paragraph 16-051-2014-0306 of the PPG explains that examples of unreasonable behaviour that may result in an award of costs include failing to be represented at the hearing without good reason.

5. Paragraph 16-056-20161210 states that it is not anticipated that awards of costs will be made in favour of, or against, other interested parties, other than in exceptional circumstances. An application may be made in favour of an interested party on procedural grounds, for example where an unnecessary adjournment of a hearing is caused by unreasonable conduct.
6. The appellant notified me on the afternoon of the day before the Hearing that they would seek a formal adjournment to the Appeal following a number of matters that had arisen over the weekend. I was informed a matter of professional and personal conflict had arisen between the ecological consultant and the arborist in the last few days such that only one consultant could credibly attend.
7. At the first day of the hearing, I was given little further substantive detail as to when the appellant first became aware of the issues or the reasoning behind the conflict. This is still the case. Given the overlap between ecological matters and those in relation to Metropolitan Open Land and landscape, they would prefer to deal with some planning and highways matters only on the day. Having heard all that I did, given the appellant had no credible ecological consultant available, in the interests of a fair hearing I agreed to deal with procedural and highway matters only before adjourning.
8. The appellant is responsible for ensuring it is able to provide witnesses for a hearing. The late notice of the situation in respect of its ecological witness and subsequent request for an adjournment is unreasonable behaviour, which has resulted in the Baring Trust incurring unnecessary and wasted expense in the appeal process.
9. The Baring Trust objected at both the planning application and the appeal stage on ecology grounds. The appellant submitted a significant amount of substantive late new ecological evidence on 6 August 2021 in advance of the hearing. I made the parties aware I wished to discuss Biodiversity at the hearing in my letter of 17 August 2021. The Baring Trust made the main parties and I aware it intended to be represented by an ecologist on 1 September 2021 and provided written evidence on 6 September 2021.
10. The grounds upon which the Baring Trust previously objected were expanded on to a limited degree in its late submission. The nature of these is such that I do not regard it unreasonable to have made the points it did, whether in written or verbal form. I am of the view that it was unreasonable behaviour for the appellant to make a costs application against the Baring Trust in respect of its biodiversity evidence, incurring unnecessary expense in the appeal process.
11. The Baring Trust did not make reference to heritage matters in significant detail in representations during the application and appeal publicity stage, or in advance of the first day of the hearing. It was during the adjournment its substantive written submission was made in effect countering the appellant's substantive submission in respect of heritage matters. Therefore, I regard it as unreasonable behaviour for the appellant to seek costs in relation to heritage matters, resulting in unnecessary expense for the Baring Trust.

Costs Order

12. 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 Austringer Estates Ltd shall pay to the Baring Trust, the costs of the appeal proceedings described in the heading of this decision in so far as they relate to their attendance at the adjourned hearing on the 14 September 2021 and providing a response to the costs application in respect of ecological and heritage matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Austringer Estates 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.

Dan Szymanski

INSPECTOR