



Costs Decision

Site visit made on 9 August 2022

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Costs application in relation to Appeal Ref: APP/M5450/C/21/3269947 Land adjacent to 51 Tudor Road, Harrow HA3 5PQ

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Kasthoori Satkunarajah for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against an enforcement notice alleging:
Without planning permission:
 1. The Unauthorised Use of the Land for storage and sale of motor vehicles (Sui Generis) ("the Unauthorised Use")
 2. The unauthorised construction of single storey wooden and Perspex canopy on the Land as shown hatched on the attached plan ("the Unauthorised Development").
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably, and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the substance of the matter under appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both¹. The application was made in writing and therefore there is no need to rehearse the detailed points made.
4. The main thrust of the applicant's case is that the enforcement notice does not fulfil statutory requirements and is therefore defective. He therefore contends that the Council acted unreasonably in issuing the enforcement notice, and the entire appeal process should have been avoided. He maintains that this is because the plan cited within the notice was not appended to the notice when it was issued, and the address does not specify the precise boundaries of where the breach has occurred. The applicant also considers that the London Plan policies referred to within the reasons for issuing the notice were incorrect as the London Plan 2021 was in force when the notice was issued. In addition

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

policies promoting small businesses from the development plan were not cited and the Council did not justify the reasons for the enforcement action during the appeal process.

5. The requirements for the content of an enforcement notice are prescribed in section 173 of the 1990 Act and Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations). It says: *'An enforcement notice issued under section 172 of the Planning Act shall specify— (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise'*. In my substantive decision, I have found that Section 4 of the notice enables the recipient to understand why the enforcement notice was issued and that overall 4(a) or 4(b) of the Regulations have not been breached in this case. Moreover, the documents submitted with the questionnaire during the appeal included the Council's Delegated Enforcement Report. The Council's submitted evidence supported the reasons for issuing the notice and I do not consider that the Council's evidence which explained the reasons for the Council's stance was materially deficient in its reasoning. As a result, I do not consider that the Council acted unreasonably in this respect.
6. The plan cited within the enforcement notice was not appended to it due to an administrative error. However, 4(c) of the regulations stipulates that a notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan **or otherwise** (my emphasis). Therefore, a plan does not have to be provided if the land is described in a way sufficient to identify it. The Council maintains that even though a plan was not appended, the boundaries of the land were stated in the notice and the land in question could be identified. It also considers that it was clear that the applicant was aware of the land in question and what the operational development and change of use was.
7. Nonetheless, in my substantive decision I have quashed the enforcement notice as it is invalid. This is because I have found that it does not specify with sufficient clarity the precise boundaries of the land where the breach of planning control is alleged to have taken place and it is not correctable in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. I have disagreed with the Council on these matters but whether the precise boundaries of the site are specified and whether the notice is correctable involve matters of judgement. I do not consider that the Council was being unreasonable in reaching its conclusion in respect of these matters.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For the reasons set out above and having had regard to all other matters raised, an award of costs is not justified.

D. Boffin

INSPECTOR