
Costs Decision

Inquiry Held on 6 & 7 September 2022

Site visit made on 7 September 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Costs application in relation to Appeal Ref: APP/M5450/C/21/3274522 Land at 14 Langland Crescent, Stanmore HA7 1NG

- 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 the Council of the London Borough of Harrow for a full award of costs against Mr Aladdin Jetha.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the material change of use of the detached outbuilding shown hatched in the plan in the rear garden of the Land from a use incidental to the enjoyment of the dwellinghouse to a use as a self-contained flat.
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Decision

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

Procedural Matters

2. Due to time constraints at the Inquiry, it was agreed that the Council's application for costs could be submitted in writing. A timetable was agreed at the Inquiry for the application to be submitted and responses made. The timetable has been adhered to.

The submissions for the Council of the London Borough of Harrow

3. The local planning authority (LPA) submit that a full award of costs is justified for the costs it has incurred in resisting this appeal. Alternatively, the LPA seek a partial award of costs in relation to the Appellant's appeal on grounds (c) and (d).
4. The LPA contend that it was unreasonable for the Appellant to pursue its ground (c) appeal as an "alternative" to its primary case under ground (d). They consider that it was not possible to put forward a positive case on each ground when the two cases are inherently contradictory. The LPA has therefore wasted costs in responding to the Appellant's ground (c) and (d) appeals.
5. The LPA also contend that the Appellant has acted unreasonably in pursuing his ground (d) appeal. Primarily, the Appellant submits that the overall evidence is insufficient to discharge the Appellant's burden of proof. Furthermore, the evidence is based on different accounts of how the building was occupied, some of which the Appellant has admitted were lies. The appeal on ground (d)

therefore had no chance of success and the LPA has wasted costs in defending it.

6. Alternatively, the LPA contend that even if the appeal was to succeed on ground (d), the Appellant acted unreasonably in failing to provide clear and/sufficient evidence to support its case in advance of the Inquiry.

The response by Mr A Jetha

7. The Appellant submits that the LPA's submissions only detail allegations of unreasonable behaviour in relation to grounds (c) and (d). Therefore, it is unclear why they seek a full award of costs in respect of the appeal which was also made on grounds (a) and (f).
8. The Appellant contends that it is not unreasonable to pursue a ground (c) and (d) appeal, as in all areas of law, grounds are pursued in the alternative in the hope that one or another may succeed. Furthermore, the LPA have not demonstrated how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
9. The Appellant's witness provided an explanation for her previous untruths, which she explained were due to extenuating circumstances. The Appellant contends that it was not therefore unreasonable for him to pursue a ground (d) appeal given the collective evidence advanced at appeal. Furthermore, it is contended that documentary evidence submitted prior to the Inquiry was sufficient to make out their case. It is not unreasonable to fail to provide sworn evidence prior to the Inquiry, and to rely on oral evidence under oath before the Inspector and tested in cross-examination. It has been consistently asserted since March 2021 that the outbuilding has been occupied since 2016 as a single dwelling and acknowledged that misleading statements had previously been made in correspondence with the Council.
10. Finally, the Appellant is mindful that the LPA's claim has been made, albeit with the Inspector's consent, after the close of the Inquiry. The request for a late costs submission was on the basis that the application turned on the nature of the evidence given at the Inquiry. However, in the main the application for costs relies on an alleged insufficiency of evidence provided in advance of the Inquiry. In addition, the LPA also provided late evidence, relying in part in the ground (a) response on a development plan policy and reasoning that was not included in their reasons for issuing the enforcement notice. The Appellant has not requested a costs award in this regard, despite having to spend additional time responding to these late reasons.

Reasons

11. 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.
12. Although the LPA have sought a full award of costs, I agree with the Appellant that no submissions have been made to explain why it was unreasonable for the Appellant to advance an appeal on ground (a) or ground (f) and therefore why a full award of costs is justified. I shall therefore confine my considerations to the application for a partial award of costs in relation to the Appellant's appeal on grounds (c) and (d).

13. I understand that the Appellant made it clear that his appeal on ground (c) was made in the alternative, and on the basis that his ground (d) appeal is not successful. I also recognise that it is possible for an appeal to be made on different legal grounds. However, as I set out in my decision, the onus of proof on ground (c) lies with the Appellant. It is therefore necessary for the Appellant to advance some evidence on this ground to support their case. The Appellant's case on ground (c) was that there had not been a material change of use to a single dwellinghouse and that the outbuilding was used as ancillary accommodation in connection with the Appellant's adjacent property, No.14 Langdale Crescent. However, except for one piece of case law being advanced, no substantive evidence was provided to support that assertion. Moreover, the Appellant's planning witness's evidence at the Inquiry was that a new planning unit had been created by the occupation of the outbuilding, and that the use of the outbuilding would meet the *Gravesham test*¹, affording all the facilities required for day-to-day private existence. That evidence was directly contradictory to his assertion that the outbuilding was in ancillary use.
14. The PPG advises that a right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of success. Examples include where there is inadequate supporting evidence and the onus of proof on those matters of fact is on the appellant².
15. It can be seen by my decision that the appeal on ground (c) did not succeed. Considering the evidence in the Appellant's statement of case and given orally at the Inquiry, I am not convinced that it was reasonable for an appeal to be brought on ground (c).
16. It should not have been necessary for the LPA to address the issues in relation to ground (c), and although only limited time was spent by them in that regard, some unnecessary expense as part of the appeal process has been incurred.
17. Turning to ground (d). The Appellant admitted early on in the appeal proceedings that previous mistruths had been made in response to the Council's initial enforcement investigation. The author of those mistruths also appeared at the Inquiry. Whilst her reliability as a witness may have been undermined by her previous untruths, she provided an explanation for her actions and was available to have her evidence tested through cross-examination under oath.
18. The Appellant also supported his appeal with documentary evidence and provided advance statements from witnesses who later gave evidence at the Inquiry. Although sworn evidence was not provided prior to the Inquiry, the witnesses were available to have their evidence examined and tested on oath at the Inquiry.
19. It can be seen by my decision that I did not find the Appellant's evidence sufficiently precise and unambiguous to conclude, on the balance of probability, that the use in question is lawful through the passage of time. However, I am satisfied that he provided sufficient evidence to substantiate his case and that

¹ *Gravesham BC v SSE and Another* [1984] 47P. & CR 142

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

it was not therefore unreasonable for him to bring about an appeal on ground (d).

20. For the above reasons, I find that unreasonable behaviour by the Appellant, resulting in unnecessary expense, as described in the Planning Practice Guide, has been demonstrated and that a partial award of costs is justified.

Costs Order

21. 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 Aladdin Jetha shall pay to the Council of the London Borough of Harrow, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Appellant's appeal on ground (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mr Aladdin Jetha, 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.

Elizabeth Pleasant

INSPECTOR