



Costs Decision

Site visit made on 14 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2023

Costs application in relation to Appeal Ref: APP/B5480/C/21/3281487 197 Ardleigh Green Road, Hornchurch RM11 2SD

- 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 of the London Borough of Havering for a full award of costs against Cozy Cafe.
 - The appeal was against an enforcement notice alleging the erection of a fixed means of enclosure and decking with tables and chair.
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Decision

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

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. Awards against a party may be either procedural or substantive.
3. The main thrust of the applicant's costs application is that the appellant has failed to adhere to deadlines set by the Planning Inspectorate, in particular the submission of the appellant's statement of case, which has prejudiced the Council's ability to provide a rebuttal. Their application is therefore procedural.
4. The PPG advises that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeal process. Examples of unreasonably behaviour include delay in providing information or other failure to adhere to deadlines.
5. The Enforcement Appeals Procedural Guide (updated 21 December 2022) advises that the appellant must submit their appeal, a copy of the enforcement notice, and other essential supporting documents detailed on the appeal form. It goes on to advise that the appeal form should disclose the appellant's case through all the grounds they are appealing on and supporting facts and any available supporting evidence. At the 6-week stage, the guidance advises that the appellant may decide to rely on their appeal form and accompanying documents as their full case or, if they decide to make any further representations, these should be sent within 6 weeks of the start date.
6. The Planning Inspectorate wrote to the appellant seeking clarification on their grounds of appeal, since the facts were considered to relate to grounds (a) and (d). The appellant confirmed in writing that they wished to pursue grounds (a) and (d) and the relevant fee for ground (a) was paid. The appeal under ground (c) was not withdrawn.

7. Although it would have been possible for the appellant to provide further information in support of their case when the appeal was submitted, the timetable enables appellants to provide further information in support of their case after this time.
8. The Planning Inspectorate wrote to the parties on 30 September 2021 setting out the timetable for the appeal. The timetable specified that by 11 November 2021, the parties should send their statement(s) and by 2 December 2021, both parties should send any final comments on each other's statement and on any comments from interested persons or organisations.
9. The Planning Inspectorate wrote to the Council on 3 November 2021, confirming that the deadline for statements for both parties was 11 November 2021, making it clear that the Council would have time to provide comment on the appellant's statement. The appellant's statement was received by the Planning Inspectorate on 4 November 2021 and was within the deadline set out in the timetable for the appeal.
10. The Planning Inspectorate wrote again to both parties on 23 December 2021 providing copies of statements and third party representations and requested comments on the points raised by 13 January 2022, thereby extending the deadline for final comments. The appellant provided their response to the Planning Inspectorate on 13 January 2022, within the deadline given by the Planning Inspectorate.
11. The appellant adhered to the deadlines set by the Planning Inspectorate and so the Council had sufficient opportunity to provide a rebuttal to the appellant's case. I cannot, therefore, conclude the appellant has behaved unreasonably in this regard and so the application for an award of costs must fail.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Savage

INSPECTOR