
Costs Decision

Inquiry opened on 6 December 2022

Site visit made on 7 December 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2023

Costs application in relation to Appeal Ref: APP/N1920/C/20/3260982 Land adjacent to Romani, St Albans Road, South Mimms EN6 3PP

- 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 Hertsmere Borough Council for a partial award of costs against Mr John Ward.
 - The inquiry was in connection with an appeal against an enforcement notice alleging Without planning permission, the change of use of land to use for commercial purposes with associated fencing, installation of hardstanding and storage of containers, plant and machinery.
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DECISION

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

THE APPLICATION AND REASONS

Submissions for Hertsmere Borough Council

2. The costs application was made in writing. The Council did not wish to make any final response at the inquiry.
3. The main points are that a significant amount of new evidence was presented by the appellant and his witnesses during the first two days of the inquiry. Adjournments were required, prolonging the length of the inquiry by one or two days. Unnecessary and wasted expense was incurred.

Response by Mr John Ward

4. The response was in writing. The main points are that the additional oral evidence was no more than can be expected when lay witnesses are asked to recall past events. It was not the reason for the adjournments. No unreasonable behaviour occurred.

Reasons

5. The Planning Practice Guidance 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. An aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. An example of unreasonable behaviour which may give rise to a

procedural award against an appellant is introducing fresh and substantial evidence at a late stage necessitating an adjournment.

New evidence

6. The Inquiry Rules¹ require an appellant to submit a statement of case within 6 weeks of the starting date of the appeal. A statement of case means a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry, and a list of any documents which that person intends to refer to or put in evidence. The appellant was reminded of this requirement and the statutory declarations of the four witnesses of fact and copies of the aerial photographs followed. No additions to the evidence of the witnesses were made at the proof of evidence stage.
7. At the inquiry each witness of fact was taken through their statutory declaration. Additional evidence came forward to varying degrees, mainly in the form of detail on the points previously made. Witnesses also addressed matters raised in oral evidence by interested parties and commented on the aerial photographs provided. All the evidence was relevant to gaining a better understanding of the history of the site and the use of the land. The appellant did not introduce a new line of argument to support his case.

Inquiry Timetable

8. The inquiry was first programmed to last for 2 days. As it turned out the inquiry was over four and a half days, including the site visit.
9. The Council's concern is directed at the presentation of the evidence of the four witnesses of fact. The Council claims that the evidence in chief of each of the witnesses lasted in excess of the estimated timings and up to an hour for each. The Council also states that it was forced to request multiple adjournments to re-prepare cross examination and consider the extent to which the new evidence affected its case. The application is not supported by details of the timings and the adjournments requested.
10. The inquiry timetable form submitted by the appellant on 21 December 2021 estimated the inquiry would take 2 to 3 days and that the appellant required 5.5 hours to present his evidence. The appellant indicated 1 hour each for the evidence in chief of each of the 4 witnesses of fact.
11. In a Pre-Inquiry Note dated 10 November 2022 I questioned the length of time estimated to present evidence-in-chief given that the statutory declarations were very short. I reminded the appellant that evidence in chief should not be used to bring forward new evidence of fact. In the opening session of the inquiry the appellant reviewed the time estimates. A time of 30 minutes was given for three of the witnesses and 40 minutes for the other witness.
12. According to my notes these revised estimates were adhered to reasonably well. The Council did not request an adjournment after the evidence-in-chief of witness 1 and declined the offer of an adjournment and agreed to continue with cross-examination after the evidence-in-chief of witness 2. There was an adjournment of about 45 minutes after the evidence of witness 3 and an adjournment of about 20 minutes after witness 4.

¹ Rule 6 in The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002

13. The inquiry lasted longer than originally scheduled for several reasons. The interested parties' evidence took about 1 hour 15 minutes on the first morning, whereas about 30 to 40 minutes may have been anticipated from the written representations. The evidence of the appellant's planning witness occupied much of day 3. This was because cross examination took longer than anticipated to enable the Council to ask all its questions and the witness to give full responses. During this time there were also discussions about the description of the alleged breach of planning control, the requirements of the enforcement notice and other matters. The parties failed to produce an agreed statement of common ground until the morning of day 3. The content of the statement could have been expanded, for example to clarify respective positions on the ground (a) appeal. The sitting times were adjusted to take account of practical matters, so that day two finished after the site visit, time was allowed for closing submissions to be prepared.
14. Looked at in the round the adjournments were relatively short and were not the main cause of the inquiry taking longer than programmed. The probability is that the Council would have incurred the expense of a further one or two days even without the adjournments resulting from the additional evidence in chief on behalf of the appellant.

Conclusion

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

Diane Lewis

Inspector