



Costs Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

**Costs application in relation to Appeal Ref: APP/T5150/C/22/3297979
19 Christchurch Avenue, London, NW6 7QP**

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The appellant states that he wrote to the Council on 22 February 2022, seeking dialogue and urging enforcement officers not to take what he refers to as hasty action without fully exhausting all options. He wrote again on 15 March 2022 setting out some facts that, in his view, should have prevented the premature issue of the notice. It is apparent that 5pm on Friday 11 March was a cut-off date for correspondence prior to the authorisation of the notice.
4. The appellant is concerned that the enforcement notice was issued in response to the correspondence sent by him on 15th March 2022, rather than as a result of no correspondence having been received. However, if he had missed a stated cut off date, then it is unclear how this could amount to unreasonable behaviour on the part of the Council. The availability or otherwise of planning officers around that time is irrelevant.
5. He makes reference to an enforcement notice that was issued on the evening of 11th March 2022 and not after the receipt of the email from the appellant at 10:48 on 15th March 2022. However, the enforcement notice that is the subject of the appeal before me was issued on 21 March 2022, and I can only take into account matters relating to that specific notice.
6. Turning then to the substance of the email of 15 March 2022, the appellant told the Council that Major Travel was looking for new office space, although they intended to leave 6-8 desks in situ, plus a pool table and lounge area. He envisaged that they would take a new lease within 3-6 months, and says that the new lease commenced on 27 June 2022, having been agreed at the end of March 2022.
7. The appellant states that the company sought new offices specifically because staff could not work from the outbuilding at No 19. However, if the tenants of No 19 were able to use the building for office work, it is unclear why the employees of Major Travel could not. He suggests that if the building was being used as offices by Major Travel, the company would not have been looking at

taking a commercial lease on offices. However, as the company had no planning permission to use the building for that purpose, and were being actively enforced against, it appears that taking on a new lease elsewhere was a necessary step.

8. In other words, the appellant confirmed on 15 March 2022 that Major Travel were occupying and using the outbuilding in some capacity, and would be continuing to do so for several more weeks or months. The main parties have clearly disagreed over the nature of that use, but issuing an enforcement notice six days after the appellant's confirmation of the occupation of the appeal site by Major Travel does not seem to me to be unreasonable.
9. The appellant comes back to the issue of the swimming pool/sauna/jacuzzi installation. As may be seen from my main decision, it has now been established between the main parties that none of these facilities were installed in the outbuilding. It may well be the case that some dialogue may have avoided the inclusion of these elements in the notice. However, this matter has been resolved by my own correction of the notice. It is unclear how the erroneous inclusion of this wording in the notice has led the appellant to any significant wasted or unnecessary expense.
10. The appellant claims that the Council failed to communicate and engage in dialogue and negotiation with him, which amounted to unreasonable behaviour. However, it seems to me that the nub of the issue is that the Council simply did not agree with his version of events. This does not amount to unreasonable behaviour on the part of the Council. Furthermore, it is clear from my main decision that the appeal was necessary in order to examine the evidence from both parties in relation to grounds (b) and (c).
11. The onus of proof under grounds (b) and (c) lies on the appellant, and not the Council. Although he is concerned that the Council refused to accept that the residents of No 19 were permitted to use the outbuilding as a home office, he has presented insufficient evidence to back up this case.

Conclusion

12. In conclusion then, it has not been shown that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and an award of costs is not warranted.

Elaine Gray

INSPECTOR