



Costs Decisions

Hearing Held on 7 and 8 March 2023

Site visits made on 8 March and 11 April 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Costs application in relation to Appeals Refs:

APP/L3625/C/22/3302376-7, APP/L3625/C/22/3302388-9 and

APP/L3625/W/22/3311492

Parcel 2, north of junction at Cross Oak Lane and Picketts Lane, Salfords, Surrey RH1 5RG

- 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 Reigate & Banstead Borough Council for a partial award of costs against Mrs Berry Collins and Mrs Theresa Baker.
 - The hearing was in connection with appeals, in summary, against two enforcement notices alleging a material change of use of the land for the stationing and residential use of touring and static caravans and the laying out of a means of access to a highway and against a refusal of planning permission for the material change of use of the land for residential use and the siting of three touring and three static caravans.
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Decision

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

The submissions for Reigate & Banstead Council

2. The application is for a partial award of costs on both substantive and procedural grounds. This is on the basis of the unsubstantiated appeals under ground (f) and the failure to follow basic appeal procedures in the late production of a Landscape Proof of Evidence (the PoE) and the late agreement of the Statement of Common Ground (SoCG).

The response by Mrs Berry Collins and Mrs Theresa Baker (the appellants)

3. The agent acting for the appellants stated he had a recognised disability which affected his ability to be personally well organised. As such, allowances should be made for that. At the time the appeals were made under ground (f), the appellants could not see a way forward but hoped that would change over time. This is why no facts or grounds were submitted when the appeals were initially made.
4. The appellants believed the late PoE would be acceptable as it did not differ that much from the PoE for Laurel acre.
5. With regard to the SoCG, this was initiated by the appellants at the start of the appeal process and in their view, it was the Council who delayed the signing and submission of the document.

Reasons

6. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process.
7. I accept that the agent has a particular condition. However, this should have been declared when the appeals were submitted, not during the response to the cost application on day 2 of the Hearing. At this point it was rather late in the day to consider making reasonable adjustments. The Council submitted that the agent also has a responsibility if he is carrying out work for others to have arrangements in place so that his disability does not result in missed deadlines. I agree.
8. The Planning Inspectorate has been engaging with the agent regularly, following the accumulation of cases during COVID-19, to deal with a number of the agent's appeals and it appears at no time has he mentioned his diagnosis. In any event, it seems to me that the appeals timetable would not have been relaxed but reminder letters and phone calls may have been put in place to prompt the agent for the required responses by the deadlines. To allow one party leeway in meeting deadlines but not the other would be unfair. In conclusion, I find that the agent's condition may explain his conduct but does not excuse it.
9. With regard to the appeals under ground (f), the appellants failed to submit details of any lesser steps with their Statement of Case. This was highlighted during the Hearing and they were invited either to make submissions or withdraw the appeals. The agent admitted he had no lesser steps to offer but refused to withdraw the appeals.
10. As the appellants persisted with the appeals without submitting any material to support their case, I find this amounts to unreasonable behaviour. It led to unnecessary and wasted expense in the appeal process in that the Council had to address this in their Statement of Case, prepare for discussions on the matter at the Hearing and it also required the attendance of the Council's Enforcement Officer at the Hearing.
11. With regard to the PoE, its arrival on the day of the Hearing (for the Inspector) and by e-mail at 22.21 on Sunday 5 March 2023 (effectively Monday) for the Council was not in accordance with the appeal timetable. It led to a 45 minute adjournment and a further 15 minute discussion while the document was printed, circulated and read. Although the appellants submitted there was not much difference between the Laurel Acre PoE and the appeal site PoE, both documents still had to be read side by side to assess this.
12. It seems to me that the appellants had only a light regard to the requirements of the appeal timetable, which amounts to unreasonable behaviour. The appellants' actions also led to unnecessary expense in the appeal process. The Council had to consider and respond to the PoE during the Hearing, which prolonged the event, and were not afforded the usual period for responding to documents submitted in time.
13. With regard to the SoCG, this was due on 19 January 2023 but it was only first seen by the Council on 8 February 2023. A re-worked copy was sent to the

appellants on 17 February 2023 and chased by the Council on 1 March 2023. It was finally signed on the second day of the Hearing.

14. Notwithstanding the submission of the document on day two of the Hearing, it was clear to me before the Hearing opened where the parties agreed and disagreed. The document added little to my understanding of their cases and to that end was of limited help. Although it arrived outside of the official timetable this was more of an inconvenience rather than unreasonable behaviour. The Council submit if it had been signed earlier there would have been a saving of time spent discussing “need” and “supply” but I doubt this would have been the case given the appellants’ strongly held views on the matter.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated in two out of the three areas. These are in respect of the making of the ground (f) appeals and the late submission of the PoE and that a partial award of costs is justified.

Costs Order

16. 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 the appellants shall pay to Reigate & Banstead Council the partial costs of the appeal proceedings described in the heading of this decision and incurred in respect of the ground (f) appeals and the Landscape Proof of Evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicants are now invited to submit to the appellants, to whom a copy of this decision has been sent to, details of those costs with a view to reaching agreement as to the amount.

D Fleming

INSPECTOR