



Costs Decision

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Costs application in relation to Appeal Ref: APP/N5090/C/22/3305100 46 Friern Park, London, N12 9DP

- 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 Barnet for a partial award of costs against Mr Riya Ramani.
 - The application is in connection with an appeal against an enforcement notice relating to a material change of use of the property to use as ten flats.
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Decision

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

Reasons - ground (d)

2. The costs application is made in respect of the related appeal on ground (d). The arguments advanced on behalf of both parties were set out in their written submissions. As such, I need not repeat them in any detail here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably in the appeal process, and that unreasonable behaviour resulted in the other party incurring unnecessary or wasted expense. The PPG lists examples of behaviour whereby an award of costs on substantive and/or procedural grounds may be justified.
4. The Council's grounds for costs are summarised as follows:
 - *The Council had made it clear from the outset they were in possession of contradictory evidence which demonstrated that the appellant's evidence during the course of the appeal was fabricated and manifestly false testimony. As such, the ground of appeal had no reasonable prospect of success.*
 - *The appeal was withdrawn very late after proof of evidence stage when a significant amount of time had been spent preparing the proof of evidence documentation.*
5. In response the appellant argues: that both before and during the appeal process the Council refused repeated requests to supply copies of the relevant documents which purported to contradict the appellant's testimony and evidence. Only when they were first provided, as part of the Council's proof,

¹ Paragraph 030 ref 16-030-20140306

did the appellant promptly withdraw the appeal on ground (d), but he was not in a position to do so any earlier.

Analysis

6. Firstly, since the appeal on ground (d) and the evidence supporting it was withdrawn by the appellant, the particular merits of the appellant's evidence i.e. whether it was accurate or not, or whether on the balance of probabilities it had a reasonable prospect of success, were not matters before me for consideration or determination in the appeal. Likewise, therefore, given that no determination was made on these matters, the merits of the appellant's evidence are not matters before me that I can consider in this application.
7. Turning to the late withdrawal of the ground (d) appeal, the Council first referred to "contradictory evidence" in their initial report authorising enforcement action.
8. After the enforcement notice was issued the agent acting for the appellant requested copies of the Council's contradictory evidence to be provided so that it could be reviewed and inform him whether ground (d) should be included as part of the appeal. The timeline and details of these email requests, which extend from before and after the appeal was lodged, form part of the appellant's response to this costs application. All requests to provide the contradictory evidence, including one made under the Freedom of Information Act, were refused by the Council.
9. It is not clear to me why the requests for the relevant documents to be provided were refused, given that they were to be later included as part of the Council's proof of evidence, and that some of them, if necessary, could have been redacted, but in any event it appears some were simply Google aerial images showing the condition of the property at a certain date.
10. The above notwithstanding, the appellant's written request should have been regarded by the Council as a continuing one, such that at the 6 week statement stage of the appeal process the Council should have provided the particular documents that were requested in accordance with the relevant Procedure Rule 6(2)(5) and (13(b))².
11. To conclude; since the Council were aware of their "contradictory evidence" documents from even before the date of issue of the enforcement notice, and intended to include them as part of their proof to the Inquiry, they could have provided them at any stage following the lodging of the appeal, including at the 6 week stage as set out in the Rules. Had they done so it seems inevitable to me that the appellant would not have proceeded with an appeal on ground (d) initially, thereby avoiding the need for an Inquiry and submission of proofs and instruction of Counsel, or at least withdrawn it at a much earlier stage.
12. As such, I find that unreasonable behaviour has not been demonstrated and the application must be refused.

Thomas Shields

INSPECTOR

² The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002