



Costs Decision

Inquiry held on 13/14 June 2023

Site visit made on 14 June 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2023

Costs application in relation to:

Appeal A Ref: APP/A5270/C/21/3273123

Appeal B Ref: APP/A5270/C/22/3301872

Appeal C Ref: APP/A5270/C/22/3301873

Appeal D Ref: APP/A5270/X/22/3307097

22 St Andrews Road, Acton, London W3 7NE

- The application is made under the Town and Country Planning Act 1990, sections 174, 195, 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 Ealing for a full award of costs or in the alternative a partial award of costs against Mr Ijaz Khan.
 - The Inquiry was in connection with appeals against two enforcement notices alleging operational development and material changes of use associated with the use of 22 St Andrews Road as flats and against the refusal of a certificate of lawful use or development (LDC) for use of 22 St Andrews Road as four flats.
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Decision

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

Submissions by the Council and the response by Mr Khan

The submissions for the Council (made orally at the Inquiry)

2. The Council seeks a full award of costs or alternatively a partial award in respect of the need for a second sitting day.
3. The Council referenced paragraph 30 of the Appeals Chapter of Planning Practice Guidance (PPG) which sets out that costs may be awarded when parties have acted unreasonably. And also, paragraph 28 which encourages good practice in terms of the presentation of full and detailed evidence.
4. The Council noted procedural problems as follows:
 - no statement was submitted in the written representations case.
 - no proof was provided to the Inquiry.
 - Mr Khan did not engage with the Pre-Inquiry note.
 - Mr Khan did not engage with the gravity of the Public Inquiry, including turning up late, without any papers, leading to the first day over-running.
 - Mr Khan did not engage with the instruction to provide written closings.

5. In terms of the substantive case, the Council noted that there had already been two applications for LDCs which had been refused on the basis of lack of evidence. It said that Mr Khan did not provide any new evidence besides his own evidence.
6. The Council said that the evidence provided by Mr Khan was entirely inconsistent and not the full and detailed evidence required by paragraph 28 of PPG.
7. The Council identified wasted costs in terms of both the second Inquiry day, as the Inquiry could have been completed in one day, and in terms of the need for an Inquiry at all. It said that this was because Mr Khan had fallen far short of the burden of proof and had simply failed to engage with the gravity of the Public Inquiry process.

The response by Mr Khan (made orally at the Inquiry)

8. Mr Khan made the following main points:
 - He considered he had acted reasonably and that he had provided evidence. He said that he had tried to contact witnesses and other people and that he had forwarded all the evidence he had to the Planning Inspectorate and the Council. He added that he had provided more evidence than had been submitted with his application for the LDC.
 - He had not requested a Public Inquiry. He thought that the issues could have been resolved by the Council looking at the tenancy agreements and Council Tax.
 - He believed that the Council had failed to act under the PPF because when he had submitted the application there had been zero communication from the Council about how to get an approval. He said that the Council had never requested any evidence and had just got on with the enforcement notice.
 - He thought that all that was required were the tenancy agreements from 2014 to 2017 and the rest of the evidence was based on Council Tax.
 - The Council had chosen the Public Inquiry. He maintained that he did prepare evidence which he gave verbally. He did not bring a file because the evidence had already been submitted.
 - The tenants did not want to come along. He noted that the complainant did not turn up. He said that there was a default win if no complainants turned up and there was no overshadowing.
 - Full Council Tax was paid to public services, and he acted reasonably.
 - The only evidence which had been challenged was what the Council had presented. He said that the information which had been sent in was to the best of his knowledge.
9. No further comments were made by the Council in reply to the response to the costs application from Mr Khan.

Reasons

10. The 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.
11. In this case Mr Khan made the appeals but he did not submit information as set out by the Council. However, he did submit Appeal Forms which demonstrated the basis for the appeals. He also submitted evidence in the form of tenancy agreements and other information.
12. Appeal A related to the erection of a breeze block structure, the removal of 2 first floor windows and bricking up of the window apertures and the creation of a self-contained unit in the ground floor left-hand side of the property. The appeal on ground (a) was agreed to be dealt with through written representations. Mr Khan produced an Appeal Statement for Appeal A, but it does not address ground (a) which is that planning permission should be granted for the works and the self-contained dwelling.
13. Effectively, the appeal on ground (a) proceeded without any arguments being made by Mr Khan.
14. The notes which are attached to the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002 set out that the appellant's representations are the notice of appeal, documents accompanying it and any statement submitted under regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, however they may submit further representations within 6 weeks of the starting date to the Secretary of State (regulation 7).
15. There is no requirement to submit an appeal statement in the Regulations and no sanctions, for example the appeal being turned away, for not doing so. However, in this case there was an Appeal Statement, notwithstanding that it did not elaborate on the Appeal Form in respect of ground (a).
16. Similarly, there is no requirement in the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (the Rules) for a Proof of Evidence to be submitted. Again, there are no sanctions for failing to provide a Proof of Evidence.
17. While there is no requirement for Mr Khan to have produced a statement which addressed his appeal on ground (a), or a Proof of Evidence I agree with the Council that the absence of these documents made it more difficult for the Council to make its case. However, I do not find that Mr Khan acted unreasonably in this respect.
18. I issued a Pre-Inquiry Note in advance of the event. Within that document I invited the parties to make comments on some matters in advance of the Inquiry. The Council produced a written response which was provided to me on the day of the Inquiry. Mr Khan did not provide a response in advance, but he did make comments in response to my questions during my opening. On that basis I do not consider that Mr Khan acted unreasonably.
19. I opened the Inquiry on time at 10.00 but Mr Khan was not present, following a short wait I adjourned for approximately 30 minutes. The Council was able to

- contact Mr Khan by phone and he explained that he was delayed by traffic. Mr Khan arrived after 15 minutes, and I was able to continue at 10.30.
20. The Inquiry was not completed in a single day because there was insufficient time for the site visit, which involved a trip of approximately 30 minutes each way, and the closings from the parties. In this context I do not consider that the 30 minute delay arising from Mr Khan's late arrival was the only reason why the Inquiry extended across two days.
 21. Mr Khan did not bring any papers with him, and he did not appear to have access to any digital copies of the tenancy agreements or other information which he relied on. It would have been helpful had he had done so and that would have avoided the need for him to access the hard copy information which had been brought to the event by the Council. However, it was my decision to suggest the Mr Khan use these papers.
 22. At the end of the first day of the Inquiry I asked both parties to prepare closing statements in writing. When the Inquiry resumed the following day, Mr Khan had not prepared such a document. This would have been helpful, and I acknowledge that the Council acceded to my request. However, there is no requirement for written closings to be submitted within the Rules for Inquiries lasting less than 4 days as was the case here.
 23. Mr Khan made his closing submissions orally.
 24. Taken together I find that Mr Khan could have engaged more proactively with the appeal process and that there is some evidence that he did not afford the Inquiry the importance and gravity which he should have done. However, I acknowledge that Mr Khan was not represented and, whilst ensuring that the principles of fairness are afforded to all parties, I do consider that he should be afforded some consideration in this context.
 25. For the reasons given above I conclude that Mr Khan did not behave unreasonably in regard to the procedural aspects of the appeals. Therefore, the issue of whether his actions in this respect gave rise to wasted expense do not fall to be addressed.
 26. In terms of the potential for a substantive award against Mr Khan, the Council refers to two applications he made for an LDC.
 27. The Council Officer refers to two applications for LDCs in his evidence Council Refs. 212706CPE and 221551CPE, which I shall refer to as the 2021 LDC application and the 2022 LDC application. The 2022 LDC application is the subject of Appeal D.
 28. The Council Officer describes the documents submitted in support of the 2021 LDC application as a subset of those produced for the 2022 LDC application. The reference to 'subset' suggests that there were differences between the evidence in support of the two applications. Mr Khan also says that he submitted additional evidence when he submitted his appeal, although he has not defined what that was, in comparison with that submitted with the applications.
 29. Mr Khan did not lodge an appeal following the Council's decision in respect of the 2021 LDC application. There is no requirement for Mr Khan to add to the

evidence that he provided to the Council in relation to the 2022 LDC application when he submitted his appeal. The appeal process allowed Mr Khan to challenge the Council's view that the 2022 LDC application provided insufficient evidence to enable a certificate to be issued. It will be seen from my decision that whether the Council's decision was well-founded was the main issue in Appeal D.

30. The Council is also critical of the evidence provided by Mr Khan to the Inquiry in making its application for costs on substantive grounds. Paragraph 28 of the Appeals Chapter of PPG refers to good practice being followed in terms of the presentation of full and detailed evidence.
31. It will be seen from my decision that I have found that the evidence provided by Mr Khan does not meet the standard of the balance of probabilities. In part this is because of the inconsistencies between the information provided including oral evidence and a lack of evidence. However, the evidence was not entirely inconsistent as suggested by the Council and there was some evidence to support the case made by Mr Khan. For these reasons, while the evidence provided was not fully detailed and did not entirely support his case, I do not regard these limitations as rendering the evidence entirely contrary to the aims of the costs regime as expressed in paragraph 28.
32. For the reasons given above I conclude that Mr Khan did not behave unreasonably in regard to the substantive aspects of the appeals. Therefore, the issue of whether his actions in this respect gave rise to wasted expense do not fall to be addressed.

Conclusion

33. I find that unreasonable behaviour on the part of Mr Khan resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that neither an award of full costs or partial costs is justified in this instance and the application is refused.

Sarah Dyer

Inspector