



Costs Decision

Site visit made on 13 June 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Costs application in relation to Appeal Ref: APP/A5270/C/22/3299943 Ground Floor Shop, 263 Horn Lane, Acton, London W3 9EJ

- 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 Ealing for a full award of costs against Mr Aulus Guimaraes.
 - The appeal was against an enforcement notice alleging Without planning permission the material change of use of the premises to a mixed use of motorcycle MOT, servicing, repairs and sales.
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Decision

1. The application for a full award of costs is refused. However a partial award of costs against Mr Aulus Guimaraes is approved in the terms set out below in the Costs Order.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 053 of the PPG² advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
4. [In enforcement appeals] sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question.
5. I concur with the Council that the pertinent matters in this appeal are essentially the same as those that were considered, by the previous Inspector,

¹ Reference ID: 16-030-20140306

² Reference ID: 16-053-20140306

in relation to the same appeal site³. I note, however, that concerns regarding air pollution did not form a substantive part of the Inspector's reasoning.

6. The Inspector, in deciding that unsuccessful appeal, referred to the absence of a noise assessment, including details of noise emissions from additional uses compared with background noise levels; the sound proofing properties of the building and controls over the level of use. Whilst the appellant has provided some description of the types of repair activity that would be undertaken, they have not addressed the omission of technical information identified by the previous Inspector. Circumstances have not therefore materially changed and the ground (a) appeal has essentially become a re-run of the previous planning appeal proposal which was found to be unsatisfactory on noise grounds.
7. In the context of the above advice, and having regard to the fact it is undisputed the appellant was professionally advised, I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated by making the appeal on ground (a) in respect of noise disturbance, and that a partial award of costs is justified.
8. I did not find the ground (g) appeal, that more time should be allowed, to be persuasive. However, the appellant was entitled to argue a case for a longer compliance period, and I do not agree that this went so far as to equate to unreasonable behaviour. Likewise, I did not see anything in the 'hidden' ground (b) appeal amounting to unreasonable behaviour. I therefore find that an award of costs, specifically on these grounds, would not be justified. This, however, does not overcome the above finding in relation to the ground (a) appeal.

Costs Order

9. 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 Mr Aulus Guimaraes shall pay the Council of the London Borough of Ealing, the costs of the appeal proceedings, limited to those costs incurred in relation to the ground (a) appeal in respect to noise disturbance; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to Mr Aulus Guimaraes, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Merrett

INSPECTOR

³ Appeal Ref APP/A5270/W/21/3281213