The Planning Inspectorate

Costs Decision

Site visit made on 15 August 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/B5480/C/21/3273166
10 Albany Road, Hornchurch RM12 4AF

- 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 Havering for a partial award of costs against Mr Richard Jose Vaz.
- The appeal was against an enforcement notice alleging without planning permission, the material change of use of the land from a single dwellinghouse to a house in multiple occupation.

Decision

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

Reasons

2. 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 Council is seeking a partial award of costs in respect of the expense of its officer in attending an appeal site visit on 9 August 2022 to which the appellant did not attend, and for the expense in making the costs application. It is said that the appellant's alleged failure to attend was unreasonable behaviour, and that it was unnecessary for the Council to have been put to such expense.

4. It is undisputed that the appellant did not attend. However, the PPG advises that failure to attend a site visit ***without good reason*** is an example of unreasonable behaviour which may give rise to a procedural award against an appellant[1].

5. On 20 July 2022, the Inspectorate Case Officer (CO) wrote to the main parties to arrange an accompanied site visit (ASV) to take place on 9 August 2022. The letter requested that the Inspector be accompanied by representatives of both parties. The letter said, "*If this is not possible, you must let me know immediately*".

6. On 25 July 2022, the appellant's agent emailed the Inspectorate and said that the appellant was unable to attend the ASV on 9 August 2022 and requested a re-scheduling of the visit. The agent received a reply from the Inspectorate which said, "*Thank you for your email which has been received and will be added to the relevant case file*". No further response from the Inspectorate was received.

[1] Paragraph: 052 Reference ID:16-052-20140306

7. I think that in the circumstances it was reasonable for the appellant and his agent, having promptly notified the Inspectorate of his unavailability to attend on the specified date (as requested by the CO in her letter) and having received an email in response suggesting that notification would in some way be processed, to conclude that the Inspectorate would re-arrange the date of the ASV. And moreover it did not respond to the agent’s email (made some 15 days before the ASV) to confirm that, notwithstanding notification of the appellant’s unavailability, that the ASV would nevertheless be proceeding on 9 August 2022. Instead, it appears that the agent’s notification was not actioned and both the Inspector and the Council officer attended on that date. That was not the fault of the appellant.

8. Accordingly, the appellant had a good reason to believe that the ASV would be re-scheduled and therefore a good reason not to attend on the date which had been put forward in the 20 July 2022 letter.

9. Further, it is not of import that the tenant answering the door of the property on 9 August 2022 did not allow access. The site visit was scheduled as an ASV and the appellant was expected – and entitled - to attend. As I have found, it was not his fault that the Inspectorate did not appropriately action his agent’s prompt request for an alternative date or at least confirm that the ASV would be going ahead. In those circumstances, it was not unreasonable that the tenant answering the door had not been given authority to provide access (including to the rooms of other tenants who may not have been present).

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andrew Walker

INSPECTOR