



Costs Decision

Inquiry held on 25-28 July and 7-9 and 11 August 2023

Site visits made on 25 July 2023 and 9 August 2023

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 26th September 2023

Costs application in relation to:

Appeal A Ref: APP/J1535/C/21/3272873

Appeal B Ref: APP/J1535/C/21/3272875

Appeal C Ref: APP/J1535/W/20/3260892

Land at Rose Farm, Hamlet Hill, Roydon, Essex CM19 5JU

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Epping Forest District Council for a partial award of costs against Mr T Breaker.
 - The Inquiry was in connection with appeals against an enforcement notice alleging a material change of use to use of land for the purposes of stationing caravans/use of buildings for purposes ancillary to residential use and the construction of a dwelling and against the refusal of planning permission for change of use of land to a private gypsy and traveller caravan site.
-

Decision

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

Submissions by the Council and the response by Mr Breaker

The submissions for the Council (made in writing)

2. The Council applies for a partial award of costs, specifically its costs of dealing with the letter dated 26 July 2023 which was submitted to the Inquiry by the appellant.
3. The Council referred to paragraphs 028, 030, 031 and 043 of Planning Practice Guidance (PPG). It considers that the appellant acted unreasonably in submitting evidence in direct contravention of the Procedural Guide and outside the timetable for the appeals. The Council asserts that there was no good reason for the submission of late evidence and refers to the submission arising because the appellant's Counsel and planning agent had not read the papers provided with the appellant's case. The Council regards this behaviour to be unreasonable.
4. In terms of the additional costs incurred in addressing the contents of the letter, the Council refer to costs arising from the consideration of the letter and additional investigations and the costs of providing a response.

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

5. The response by the appellant can be summarised as follows:

- There are three principles to be considered, 1) that there has been some sort of unreasonable behaviour, 2) that the behaviour puts the Council to a disadvantage and 3) that actual damage flows from that.
- It cannot be denied that one lease had not been signed and another cited the wrong address. As soon as this was realised the appellant sought to correct the error and this was accepted by the Inspector. Evidence was presented the following day and the Council was given time to deal with it.
- This did not disadvantage the Council because it was not difficult to deal with the letter and would not have taken long. The information was not unusual or out of the ordinary.
- No extra time was needed overall because the witness was coming back in any case because time had run out for her to be cross examined.
- In the overall case it did not add significantly to the time. There was plenty of time to fit in other things without additional expense.
- The Council cannot justify that damages flow from the time spent. The best it can say is that the Council officer had to go away and visit the flat and research documentation.
- The research showed a leasehold interest which assisted the appellants case not the Council's. What the Council officer said was not corroborated by the official documents.
- The appellant considers that the application for costs has very little merit.

Final submissions by the Council (made orally at the Inquiry)

6. The final submissions by the Council can be summarised as follows:

- The appellant has applied the wrong tests. There is no three part test in the way set out. The Council has referred to the tests set out in the PPG.
- The costs application is not about extending or shortening Inquiry time, it relates to the additional costs associated with considering, investigating, and responding to the letter.
- The research carried out by the Council was not flawed. The address given on the letter as a correspondence address was incorrect.
- There has been unreasonable conduct, the unreasonable conduct led to additional expense and a partial award is justified on that basis.

Reasons

7. Parties in planning appeals normally meet their own expenses. However, 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.
8. In this case late evidence was submitted by both parties during the Inquiry, some of which was in the form of clarification for example copies of relevant

policies. It proved possible to allow for consideration of this evidence fairly by both parties as part of the flow of the event. However, the submission of the letter dated 26 July 2023 signed by David Samules (Mr Samules letter) was different.

9. Mr Samules letter was submitted to address an anomaly in the AST Agreement which had been provided in accordance with the timetable when Ms Wilson's Proof of Evidence was submitted. Had the anomaly been picked up at that stage and Mr Samules letter provided, the Council would have had the opportunity to carry out its investigations in advance and would have been able to respond to it at the Inquiry.
10. At the Inquiry Counsel for the appellant said that his client should not be penalised by the errors of others, being the failure to pick up the anomaly in the AST Agreement. As I explained to the Inquiry when I accepted the Mr Samules letter as late evidence, in my view the appellant should not be prejudiced by the error made by his representatives. These were the exceptional circumstances which allowed me to accept the letter as late evidence.
11. For the reasons set out above the introduction of Mr Samules letter, amounts to unreasonable behaviour.
12. As a consequence of the contents of Mr Samules letter it was reasonable for the Council to carry out further investigations regarding Mr Samules interest in 147 Longbanks and for officers to visit the premises. It was also necessary for the enforcement officer to prepare a supplementary statement. Notwithstanding the outcome of that work, and whether it supported the Council's case or not, the Council incurred additional expense.
13. PPG sets out examples of where unreasonable behaviour may give rise to an award of costs against an appellant. These include where the appellant introduces fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would otherwise not have arisen.
14. In this case although the submission of Mr Samules letter did not result in an adjournment it did result in additional preparatory work. Therefore, I find that the introduction of Mr Samules letter, which amounted to unreasonable behaviour, also gave rise to unnecessary additional expense to the Council which could have been avoided had it been provided in accordance with the appeal timetable.
15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the submission of late evidence in the form of Mr Samules letter and a partial award of costs is therefore warranted.

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 Mr T Breaker shall pay to Epping Forest District Council the costs of the appeal proceedings in the heading of this decision, limited to those costs incurred in respect to the consideration, investigation and response to the letter dated 26

July 2023 signed by David Samules which was submitted to the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The applicant is now invited to submit to Mr Breaker, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sarah Dyer

INSPECTOR