
Costs Decision

Hearing Held on 10 October 2023

Site visit made on 10 October 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Costs application in relation to Appeal Ref: APP/M5450/C/22/3294681 Land at Hive Farm, Hive Road, Bushey WD23 1JQ

- 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 Harrow for a full award of costs against Mr Andrew Murphy.
 - The Hearing was in connection with an appeal against an enforcement notice alleging the construction of a new dwelling.
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Decision: the application is refused

The submissions for the Council of the London Borough of Harrow

1. The Enforcement Notice was issued in February 2022. The appellant instructed a solicitor to represent him, who wrote to the Council in March 2022. The appellant was represented at the Hearing by an experienced planning consultant. The appellant was therefore professionally represented throughout. Notwithstanding that, on the day of the Hearing adduced eight additional photographs. Those photographs were highly relevant evidence. The late submission of these 'bombshell' photographs was highly prejudicial to the Council's case and may have (but ultimately did not) caused the Council to review its position. The appellant had that evidence in his possession for over a year prior to the date of the Hearing. No reason was given as to why that evidence was not provided earlier. It is a fundamental principle of the appeal process that full evidence must be provided in a timely manner. The late submission of this evidence was the very definition of unreasonable behaviour as set out in the Planning Practice Guidance (PPG), and caused the Council wasted and unnecessary expense.
2. The 9-page document submitted by the Council on the morning of the Hearing was a direct response to the points of law raised by the Inspector in his Agenda, and very different to being 'ambushed' by the submission of evidence of substance on the morning of the Hearing.

The response by Mr Andrew Murphy

3. The Council complains about the late submission of evidence by the appellant, but the Council itself submitted a 9-page document on the morning of the Hearing. The appellant has complied with the appeal timetable in submitting his evidence. The appellant is only required to use reasonable endeavours in submitting his appeal, and is not required to use his best endeavours. In that context, the appellant submitted a Statutory Declaration. The photographs

submitted on the morning of the Hearing were only made available to the appellant's representative at the end of the week prior to the Hearing. The appellant has not acted unreasonably.

Reasons

4. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG states that the right of appeal should be exercised in a reasonable manner and goes on to provide examples of unreasonable behaviour which may result in an award of costs against an appellant. These examples include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. The PPG indicates that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. This Hearing proceeded under the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002 (the Rules). There is no provision in the Rules for the submission of evidence outside of the deadlines set out in those Rules. The acceptance of any late evidence is therefore entirely at the discretion of the Inspector, having regard to the principles of fairness and natural justice.
6. The eight additional photographs adduced by the appellant on the day of the Hearing were highly relevant evidence in relation to the ground (d) appeal. I accept that the photographs were only made available to the appellant's representative at the end of the week prior to the Hearing. Those photographs all related to events that took place in 2017 and, crucially, were therefore in the appellant's possession at the time when the appeal was lodged in March 2022. If the photographs were considered relevant to the appellant's appeal on ground (d) in the week before the Hearing, it inexorably follows that they must have been equally relevant when the appeal was originally lodged.
7. There is therefore no reason whatsoever why those photographs could not have been provided as part of the appellant's initial appeal documents or, at the very latest, at statement stage six weeks after the appeal was lodged. Indeed, I would put it higher than that: if the appellant intended to rely upon them at all, those photographs should have been provided in accordance with the appeal timetable set out in the Rules. I therefore have no hesitation in finding that the appellant acted unreasonably in submitting those photographs on the morning of the Hearing itself.
8. The submission of those photographs on the morning of the Hearing itself put me in an invidious position. On the one hand, it is vital for robust decision making that I had the best possible evidence before me. On the other hand, accepting that evidence could clearly have prejudiced the Council. In the event, the Council (and myself) were able to deal with that additional evidence as the Hearing progressed. Consequently, whilst the introduction of this late evidence did require the Council to undertake some extra preparatory work that would not otherwise have arisen, fortuitously it did not necessitate an adjournment of the Hearing.

9. The introduction of this late evidence on the morning of the Hearing itself fell a long way short of the good practice advocated in the PPG. Whilst I am satisfied that the Council was ultimately not prejudiced by my acceptance of that late evidence, I do concur with the Council's use of the term 'ambushed' to describe the actions of the appellant in this respect.
10. The PPG is very clear in that costs may only 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 (emphasis added). In this case, whilst the appellant did behave unreasonably in the submission of additional evidence on the morning of the Hearing itself, in the event the Council did not incur any unnecessary or wasted expense in responding to that evidence. The two conditions necessary for an award of costs are not met, such that an award of costs is not justified.

Paul Freer
INSPECTOR