



Costs Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Costs application in relation to Appeal Ref: APP/T5150/C/23/3317873 137 Llanover Road, Wembley HA9 7LW

- 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 Brent for an award of costs against Sughran Bibi Ullah.
 - The appeal was against an enforcement notice alleging the material change of use of the premises to two flats and the erection of a dwelling to the rear of the premises.
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Decision

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

Procedure and preliminary matters

2. Parties in planning appeals normally meet their own expenses. However, 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. Awards against a party may be either procedural or substantive.
3. The PPG sets out the type of behaviour that may give rise to a substantive award. An appellant is, for example, at risk of an award of costs being made against them if the ground of appeal has no reasonable prospect of succeeding.
4. The appellant indicated in her appeal form dated the 3 March 2023 that the appeal would proceed on grounds (b) (d) and (f). The appellant subsequently withdrew the ground (b) appeal in her statement and the ground (d) appeal on the 13 November 2023. The appeal was then determined on ground (f) only by way of written representations with the appeal being dismissed and the enforcement notice upheld.

Reasons

5. The Council seeks a full award of costs in respect of the ground (f) appeal and a partial award of costs in respect of the withdrawn ground b) and d) appeals. The claim is made both on procedural grounds in relation to the appellant's conduct and substantive grounds in relation to the merits of the appeal.

Ground (b)

6. The Council considers that the withdrawal of the ground (b) should have occurred within 14 days of receipt of the Council's statement and that a failure to do so was unreasonable and incurred wasted costs between 26 May 2023 and 13 November 2023.

7. However, the ground (b) appeal was withdrawn in the appellant's statement filed on the 12 May 2023. There was no need for the appellant to address ground (b) any further once it received the appellant's statement. I accept that the appellant raised similar arguments in her appeal statement as part of ground (f) but in responding to ground (f), the Council is not responding to an appeal under ground (b). The appellant did withdraw the ground (b) in the early stages of the appeal and unreasonable behaviour resulted in wasted costs has not occurred in relation to the ground (b) appeal.

Ground (f)

8. The Council argues that the ground (f) appeal is totally without merit and has not been substantiated by any evidence and that as the ground (f) was the only ground that was left to consider, the right of appeal has been exercised unreasonably.
9. Without a ground (b) appeal, the ground (f) argument failed as it assumed that the allegation was incorrect which is not a ground (f) argument. Ground (f) arguments relate to the purpose of the notice having regard to the breach. The appellant did initially pursue a ground (b) appeal with an explanation. However, there was a clear cross over between the arguments made by the appellant under those grounds and without ground (b), the ground (f) argument fell away. I therefore consider that unreasonable behaviour occurred when the appellant chose not to withdraw the ground (f) appeal at the same time as withdrawing ground (b) on 12 May 2023.
10. The appellant has referred to the Council's preparations not being wasted if the ground (f) contained a hidden ground (b). The appellant who is professionally represented chose to withdraw ground (b) early on in the appeal process and was therefore no longer disputing that an erection of a dwelling had occurred. How the withdrawal of ground (b) would impact the ground (f) argument was a matter for the appellant to consider. There is no 'hidden' ground (b) in those circumstances when the appellant had already withdrawn her argument in terms of that part of the breach having not occurred as a ground (b) appeal.
11. I do therefore find that it was unreasonable for the appellant to pursue a ground (f) appeal from the 12 May 2023 until the conclusion of the appeal for the reasons stated. Wasted costs were incurred during that period.

Ground (d)

12. The Council considers that the withdrawal of the ground (d) should have occurred within 14 days of the receipt of the Council's statement and that omission was unreasonable and wasted costs were incurred between 26 May 2023 and 13 November 2023.
13. The ground (d) appeal related to the material change of use of the premises to two flats. No explanation was provided at the time of the withdrawal of the ground (d) appeal on 13 November 2023 either in terms of timing or reasoning. As part of the costs response, the appellant states that 'the witnesses had previously suggested that they would be willing to attend the Inquiry but decided that they were unwilling or unable to take time off work.' The timing of the withdrawal of the ground (d) occurred just over 4 weeks before the Inquiry was due to start.

14. The change in procedure from written representations to an inquiry on the 15 May 2023 was due to the need for evidence to be tested on oath with formal questioning which related to the ground (d) evidence. From May 2023, there was ample time for the appellant to secure their attendance and to ensure that they would be available when required for the Inquiry. Any difficulties with any specific dates could have been raised earlier in the appeal process. The explanation provided for the witnesses being unable or unwilling to attend is generalised and not specific to the individual witnesses circumstances and no timelines are provided. Limited information is provided as to why the tenants changed their mind at such a late stage of the appeal.
15. The appellant considers that withdrawing the ground (d) on 13 November 2023 prevented both sides incurring more costs. Nevertheless, by that stage, the Council had already incurred wasted costs in preparation for the Inquiry fixed for the 12 December 2023 with regard to the ground appeal (d). For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the ground (d) appeal for the period claimed by the Council namely between 26 May 2023 and 13 November 2023.

Conclusion

16. I conclude that unreasonable behaviour on the part of the appellant resulting in unnecessary and wasted expense as described in the PPG has been demonstrated in respect of ground (d) for the period between the 26 May 2023 and the 13 November 2023 and in respect of ground (f) between the 12 May 2023 and the issue of the Decision Letter and a partial award of costs in therefore justified.

Costs Order

17. 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 Sughran Bibi Ullah shall pay to the Council of the London Borough of Brent the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred between the 26 May 2023 and the 13 November 2023 for ground (d) and between the 12 May 2023 and the issue of the Decision Letter for ground (f); such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The Council is now invited to submit to Sughran Bibi Ullah 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.

E Griffin

INSPECTOR