



The Planning Inspectorate

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Your Ref: 21/3905/CE, 21/4106/A &
21/4462/L

Our Ref: APP/E5330/X/22/3291974
APP/E5330/Z/22/3294073
APP/E5330/Y/22/3294105

Date: 7 February 2024

Dear Sir

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN & COUNTRY PLANNING ACT 1990 – SECTIONS 195 & 322
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 – SECTIONS 20 & 89
TOWN & COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) (ENGLAND) REGULATIONS 2007 – REGULATION 17
LOKANTA BAR AND GRILL, 11-13 GREENWICH CHURCH STREET, LONDON, SE10 9BJ:
APPEALS BY MR HUSSEIN ZINNUREYIN: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's decisions dated 21 December 2023 and 22 January 2024 concerning the appeals by Mr Hussein Zinnureyin. The details of the appeals are as follows:

3291974 (Appeal A): Appeal against the decision dated 24 December 2021 by Royal Borough of Greenwich Council to refuse to grant a lawful development certificate (LDC) for use of rear yard for seating, and shisha, and a temporary pergola fixed to a timber deck, in the rear yard, and within the curtilage of a listed building (Locanta Turkish Restaurant - Existing Use Class E (previously A3/ A4). (LPA ref: 21/3905/CE)

3294073 (Appeal B): Appeal against the decision dated 9 February 2022 by Royal Borough of Greenwich Council to refuse Advertisement Consent for two illuminated LED strip lights to replace six swan neck lights above revised fascia signage, two illuminated strip lights with replacement projecting signage, and replacement of five existing flood lights with five LED wall uplights to front façade (retrospective). (LPA Ref: 21/4106/A)

3294105 (Appeal C): Appeal against the decision dated 9 February 2022 by Royal Borough of Greenwich Council to refuse Listed Building Consent for two illuminated

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LED strip lights to replace six swan neck lights above revised fascia signage, two illuminated strip lights with replacement projecting signage, and replacement of five existing flood lights with five LED wall uplights to front façade (retrospective). (LPA Ref: 21/4106/A)

2. This letter deals with the Council's application for an award of costs against the appellants as made in correspondence dated 5 December, 13 December & 21 December 2023. The appellants replied on 12 December and 13 December 2023. As these representations have been fully disclosed to the parties, it is not proposed to summarise them. They have been carefully considered.

Summary of decision

3. The formal decision is set out in paragraph 11 below. The costs application fails and no award is being made.

Basis for dealing with the costs application

4. In planning and enforcement appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party, irrespective of procedural method, where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered by reference to the Government's Planning Practice Guidance (PPG) on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. The decisive issue is whether or not the appellant acted unreasonably, with the result that the Council were put to unnecessary expense, by failing to attend (or be represented) at an accompanied site visit as arranged on 5 December 2023. Particular regard has been paid to the guidance at paragraph 052 of the PPG in consideration of the costs application.

8. An accompanied site visit was arranged for 10:00 on 5 December 2023. Relevant details were given in the Planning Inspectorate's letter of 29 November 2023 sent by email to the appellant's agents, Russell Associates. The letter clearly stated "It is important for you to make immediate arrangements for the Inspector to be met at the site to enable the inspection to be made." Although the Inspector and Council representative attended they were not met on site by the appellant/his agents, and the Inspector was unable to gain access to the premises. After waiting for approximately 10 minutes, the Inspector conducted the site visit on an unaccompanied basis, and the Inspectorate confirmed this to the parties in an email dated 13 December 2023. The email stated:

"The Inspector arrived at the site and knocked several times on the front door. She waited for 10 minutes but the appellant did not turn up. She has seen the front of the

property and will determine the appeals based upon the written evidence and what she saw at the front.

As you will appreciate the Inspector has to carry out site visits in a timely manner , waiting too long at one site will have an impact on further site visits scheduled for that day."

Conclusions

9. The appellant's agent acknowledges they overlooked the email containing the site visit notification letter due to an error on their part. They cite having several appeals in the London Borough of Greenwich and receiving several emails from the Inspectorate over the same period as reasons to why this particular email 'slipped through the net'. Whilst the agent suggested they could have been contacted once their absence had become apparent and could have attended promptly since their offices were a short walk away, the Secretary of State considers that the onus was on themselves (or a representative) to be in attendance at the start of the site visit, as the notification letter instructed. Furthermore, as pointed out in the Inspectorate's email of 13 December, the Inspector had further visits scheduled for the same day and therefore must complete each visit in a timely manner.

10. The Secretary of State acknowledges that the agent did not intend to miss the site visit and notes his apologies for this, however he finds it difficult to avoid the conclusion that this amounted to unreasonable behaviour. Nevertheless, an award of costs may be made only on grounds of unreasonable behaviour resulting in unnecessary or wasted appeal expense. In this case it was not necessary for further arrangements to be made for an accompanied site visit as had been envisaged by the Council at the time the costs application was made. The Secretary of State notes the Council's final response to the costs application of 21 December 2023, by which time they had been informed that a further site visit would not be required. He appreciates the efforts the Council made in attending the site visit, however the Council did not incur any expense *in addition* to the expense of attendance on 5 December 2023. It stands to reason that that expense would have been incurred in any event on the basis that both parties were required to attend (or be represented) at the site visit on that date. The conclusion therefore drawn, in the absence of the need for a further site visit, is that the Council did not incur unnecessary expense in the appeal process.

FORMAL DECISION

11. For these reasons the Secretary of State has decided that an award of costs on grounds of "unreasonable" behaviour resulting in unnecessary expense is not justified in the particular circumstances of this case. The Council's application for costs is therefore refused.

12. A copy of this letter has been sent to the appellant's agent.

Yours faithfully

E. R. Humphrey

ELIZABETH HUMPHREY
Authorised by the Secretary of State
to sign in that behalf

