



Costs Decision

Inquiry held on 28 February 2024

Site visit made on 29 February 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th April 2024

Costs application in relation to Appeal A Ref: APP/A5270/C/23/3323826 and Appeal B Ref: APP/A5270/X/23/3314685

73 Lee Road, Perivale, Middlesex UB6 7DA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Ealing for a full award of costs against Mr Mousa Abid Mousa.
 - The inquiry was in connection with appeals against an enforcement notice alleging the material change of use of an outbuilding to a separate self-contained dwelling and a Certificate of Lawful Use for the same use.
-

Decision

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

Preliminary Matters

2. The application for costs was made in writing at the Inquiry. The appellant responded to the costs application in writing and the Council provided rebuttal comments in writing.
3. 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. The Council's application for costs is both procedural and substantive.

The Council's claim

4. The PPG advises that the right of appeal should be exercised in a reasonable manner. Examples of unreasonable behaviour include the appeal or ground of appeal having no reasonable prospect of success. The substantive claim is based upon the appellant's failure to provide precise and unambiguous evidence of the continuous use of the outbuilding as a dwelling for any period meant that the appeal had no reasonable prospect of success.
 5. The appellant and his brother were the only witnesses at the Inquiry. It was not necessary for the appellant to give evidence as his position was that he left all dealings in relation to the appeal site to his brother Mr Majid Mousa. Mr Majid Mousa did not have personal knowledge of how the property had been used.
 6. The procedural claim is based upon the appellant's request for a hearing in the enforcement appeal form to enable his tenants to be called as witnesses to
-

prove four years continuous use. No tenants attended at the Inquiry. The Council also refers to new issues raised by the appellant throughout the appeal process particularly in a document submitted on the 5 February 2024 and the opening statement at the Inquiry.

The appellant's response

7. The appellant confirms that it was apparent that he had no major dealings with the property but that his brother had dealt with the property for 15 years. He considers that it was essential for the two witnesses to be cross examined. The appellant refers to needing to only show continuous use over the last four years. He states that the two witnesses who did not attend the hearing 'related to the front building' and their attendance would have been beneficial but not essential. The appellant also refers to three appeals for the appeal site being combined.

Reasons

8. The reason given for the appellant's request for a hearing was that tenants would be called to give evidence. As the enforcement appeal and LDC appeals were about the outbuilding, any evidence from tenants would need to be about the outbuilding. It was a matter for the appellant to decide who to call to give evidence. However, in the absence of any tenants, at the Inquiry, the information provided by the appellant and his brother about the use and occupation of the outbuilding was very limited.
9. In terms of procedure, the appellant asked for a hearing for the enforcement appeal in his appeal form. As there was an appeal under ground (d) there is usually a need for evidence to be tested by way of oath or affirmation by way of Inquiry rather than a hearing. The procedure for the enforcement appeal was therefore fixed as an Inquiry from the outset. As the LDC related to the same outbuilding, it was appropriate to hear those appeals together at an Inquiry and the appellant's views on those two appeals being combined was sought. The appellant's agent was not appointed for the other appeal which related to a different building and no request was made at any time for the third appeal to be dealt with as a part of the Inquiry.
10. The appellant refers to the need for the witnesses to be cross – examined but neither witnesses had any direct knowledge of how the outbuilding had been occupied or used. The appellant repeatedly changed his mind as to what period he was relying upon for the appeal. The appeal process started with a continuous use since 2009, then a change to 2016 in February 2024 and references to the last four years were also made. The absence of clarity about the appellant's case added to the work of the Council in defending the appeal.
11. There was also a lack of understanding that it was for the appellant, who was professionally represented, to prove his case on the balance of probabilities with precise and unambiguous evidence. There was no reasonable prospect of success for the appeals based upon the documentary evidence provided and the evidence given at the Inquiry.
12. For the reasons given, 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.

Costs Order

13. 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 Mousa Abid Mousa shall pay to the Council of the London Borough of Ealing the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Mr Mousa Abid Mousa, to whom 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