



Costs Decision

Inquiry held on 27 March, 8 April 2024

Site visit made on 28 March 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st June 2024

Costs application in relation to Appeal Ref: APP/V5570/C/22/3310717 Land at Basement and Ground Floor, 295 Caledonian Road, London N1 1EG

- 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 London Borough of Islington for a partial award of costs against Mr Taylan Coban.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a change of use of the rear basement and part rear ground floor into a self-contained residential flat, a change of use of the front basement into a self-contained residential studio flat and alterations to the shopfront.
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Decision

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

The submissions for London Borough of Islington (Applicant)

2. The costs application was made orally at the inquiry. The Applicant has sought a partial award of costs, on a substantive and procedural basis. Substantively, the Applicant says the Respondent's behaviour was unreasonable, on the basis that the ground (f) appeal had no prospect of success, and no evidence was adduced before the inquiry to support the appeal on this ground.
3. Procedurally, the Applicant says the introduction of new evidence at a late stage was unreasonable. This included proofs of evidence from witnesses who were not ultimately called to give evidence during the inquiry. The Applicant also says evidence was only submitted days before the inquiry, despite it repeatedly having been requested by the Council, even before the enforcement notice was issued.

The response by Mr Taylan Coban (Respondent)

4. The response was made orally at the inquiry. In terms of the alleged substantive unreasonable behaviour, the Respondent says ground (f) was pursued during inquiry, including during opening statements, and subsequently maintained throughout. Procedurally, the Respondent says late evidence is not uncommon during inquiry proceedings and he did the best he could, submitting evidence as and when it became available.

Reasons

5. 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.

Allegation of Substantive Unreasonable Behaviour

6. Whilst the appeal on ground (f) has failed, it was not unreasonable for the Respondent to argue that lesser steps than those set out in the enforcement notice would have overcome the Council's objection. There are examples of lightwells within stallrisers along Caledonian Road, which meant it was reasonable for the Respondent to seek the retention of this component of the development. This matter could have been relevant to the planning merits of the development if an appeal on ground (a) had been brought, which commonly overlaps with an appeal on ground (f). Moreover, whilst limited information was presented on the ground (f) appeal during the inquiry, the case was made out, albeit briefly, in written statements.
7. Therefore, substantive unreasonable resulting in unnecessary or wasted expense has not occurred.

Allegation of Procedural Unreasonable Behaviour

8. Planning Practice Guidance gives several examples where procedural behaviour of an appellant may give rise to an award of costs. These examples include delay in providing information or other failure to adhere to deadlines and only supplying relevant information at appeal when requested, but not at application stage.
9. In the week before the inquiry, the appellant submitted various late evidence. This included additional statements from Taylan Coban and Lulezim Gashi, dated photographs, evidence of bank transactions in respect of rental receipts, an invoice for works and a lettings agreement with MoveHome Ltd. Some of these documents were received as late as Monday 25 March, just two days before the inquiry start date.
10. Much of this late information had been requested by the Council, even before the enforcement notice was issued. In particular, I note the email from Kevin Plaster to Taylan Coban on 19 July 2022, which said:

"Please provide copies of your bank accounts showing the money from each tenant for each year for each flat, indicating payment of rent, copies of utility bills and any other evidence in your possession indicating these two residential units for the period since 2016".
11. This late evidence introduced extensive new material relevant to the case, which could have been submitted far sooner, in accordance with the appeal timetable. As per the PPG, this amounts to unreasonable behaviour.
12. In response to the late submission, the Council prepared an additional Rebuttal Statement to respond comprehensively to the new issues raised. The time and expense incurred in the preparation of this rebuttal statement could have been avoided if the evidence had been submitted sooner, and prior to the preparation of their original statement.
13. The inquiry was originally scheduled to sit for one day, which was based on the evidence originally submitted and the time estimates given by the parties. However, formal examination and cross-examination of the witnesses took much longer, in large part due to the late evidence submitted. This meant a second sitting day was required, and the need for this second day was directly attributed to the late submission of evidence.

14. I therefore consider that the Respondent's late submission of evidence was unreasonable, and this unreasonable behaviour resulted in unnecessary or wasted expense. A partial award of costs is therefore warranted.

Costs Order

15. 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 Taylan Coban shall pay to London Borough of Islington, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in:

- (a) the preparation of the Council's Rebuttal Statement; and
- (b) the second day of the inquiry

such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Mr Taylan Coban, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

James Blackwell

INSPECTOR