



Costs Decision

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2024

Costs application in relation to Appeal Ref: APP/J1915/X/22/3305228 Penrhyn, London Road, Spellbrook, Hertfordshire CM23 4BA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by East Hertfordshire District Council for a partial award of costs against Mr I Hussain.
 - The appeal was against the refusal of a certificate of lawful use or development for construction of garage with brick walls and pantile roof.
-

Decision

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

Reasons

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.
3. The applicant's case is that the appellant behaved unreasonably in failing to attend scheduled site visits at which the Inspector must be accompanied by the appellant and the Council, or their representatives. Three visits were attempted, all of which had to be aborted on account of the absence of the appellant or his representative. As a result, the Council incurred costs associated with wasted officer time and travel.
4. There is no statutory time period for applying for an award of costs against another party, but the Planning Practice Guidance¹ advises that applications concerning conduct relating to the site visit itself should be received no later than 7 days after the date of the visit.
5. It is common practice for any applications to be made at the end of proceedings, even where an adjournment has taken place. In the case of appeals proceeding by way of written representations (as this appeal was), the site visit is normally the final event.
6. I have therefore considered the entire application, as it relates to the all the attempted site visits, as collectively they were the final event in the proceedings. To do otherwise in such cases could unnecessarily give rise to multiple applications from the same party.

¹ Paragraph: 035 Reference ID: 16-035-20161210

7. The Planning Practice Guidance² identifies failing to attend or to be represented at a site visit without good reason as a type of behaviour which may give rise to a procedural award against an appellant.
8. In his appeal form the appellant stated that it was essential for the Inspector to enter the site to see the height of the ground immediately adjacent to the garage. The garage is located in the rear garden, and neither it, nor the ground around it, are visible from the street.
9. Letters were therefore sent on three occasions notifying of a scheduled site visit time. Each letter expressly stated that arrangements must be made for the Inspector to be met at the site, that if the appellant could not attend he should arrange for someone else to attend in his place, and that he should make contact immediately if that was not possible. In addition, the notification letter for the third visit also made clear that it would be the Inspector's final attempt to visit.
10. The first visit was scheduled to take place on 16th April 2024. The appellant advises that, on the first occasion, people were at the property at the time of the visit. However, contact was made by the appellant's agent two hours before the scheduled visit time advising of a bereavement which made the visit impossible. Although only very short notice was given, and the Council may have travelled unnecessarily, I have seen no evidence that the appellant's absence on that occasion was unreasonable.
11. The second visit was scheduled for 30th April 2024. The appellant states the visit was affected by a death, and that notice was given to the Planning Inspectorate in sufficient time for the LPA officer not to attend. I have seen no evidence of any such notification, and it may be that was in fact the first date. Whatever the case, no notification was given of Mr Hussain's absence. The Council's officer attended at the scheduled time, and waited for a reasonable period outside the land before the visit was aborted.
12. The third visit was scheduled for 4th June 2024. The appellant advises that he did not receive the letter notifying him of the date and time of the visit as the email notification ended up in a spam folder, and was only seen on the morning of the site visit. However, the notification letter was sent both by email and post to his agent a month before the visit, and it seems unlikely that he was not aware of it. I have also seen no evidence that Mr Hussain notified the Planning Inspectorate or the Council that neither he nor a representative would attend the visit, irrespective of his claim that he did so at 8:13am on the day of the visit, in advance of the 10:30am site visit.
13. In relation to the second and third scheduled visits, the Council's representative attended on each occasion. I have seen no convincing explanation as to why Mr Hussain, or his representative, did not attend. His failure to attend was unreasonable, and resulted in wasted expense to the Council.
14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the appellant's failure to attend scheduled site visits on two of the three occasions and a partial award of costs is therefore warranted.

² Paragraph: 052 Reference ID: 16-052-20140306

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 I Hussain shall pay to East Hertfordshire District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the Council's attendance of the scheduled site visits on 30th April 2024 and 4th June 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Mr I Hussain, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Peter White

INSPECTOR