



Costs Decision

Inquiry held on 8 and 9 May 2024

Site visit made on 9 May 2024

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Costs application in relation to Appeal Ref: APP/T5150/C/22/3308003 17 Windsor Crescent, Wembley HA9 9AN

- 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 Brent for a full award of costs against Mr Imran Ashraf.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the premises to multiple self-contained flats.
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Decision

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

The submissions for the Council of the London Borough of Brent

2. The costs application was submitted in writing at the inquiry and supplemented by oral submissions during the course of the event. I will not reproduce the applicant's detailed submissions here, instead they are summarised as follows.
3. The appellant acted unreasonably by failing to constructively co-operate with the Council in advance of the inquiry over the preparation of appeal documentation and evidence. There has been a failure to cooperate over the production of a Statement of Common Ground (SoCG) and Core Documents for the inquiry. Late evidence was submitted at the inquiry leading to further work and expense for the Council at short notice.
4. Furthermore, the appellant has submitted false documentation; incomplete or conflicting statements; irrelevant documents; and misleading documents. In light of this unreasonable behaviour the Council has incurred unnecessary costs in defending its case, exposing the appellants false documentation and untruths, and dealing with his uncooperative behaviour.

The response by Mr Imran Ashraf

5. The response was made orally at the inquiry. The appellant largely accepts the Council's submissions. However, they point out that they did submit documentation by the 10 April 2024 deadline set by the Planning Inspectorate. In this regard, they state that the Council had requested documentation sooner. They emphasise that they were unrepresented in this case and, therefore, struggled to compile the necessary documentation and evidence to support their case. The appellant also highlighted a number of personal circumstances which had hindered his preparation for the inquiry.

6. The appellant had expected access to a Council photocopier and other resources to enable them to compile their appeal documents and supporting evidence for the inquiry. However, this was not forthcoming.
7. In relation to the SoCG, the appellant was unaware of what this was and had responded the best they could to the Council's initial draft SoCG. The appellant now accepts that the Council's witness evidence was true and accurate and has admitted that some documents are not true originals. They also point out that they have cooperated by providing access to the appeal property for site visits.
8. Therefore, they dispute that their behaviour has been unreasonable.

Reasons

9. 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.
10. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive in relation to the merits of the appeal. In this case, the application for costs is made on both procedural and substantive grounds.
11. In relation to procedural matters, the PPG advises that appellants are at risk of an award of costs being made against them for various reasons, including: resistance to, or lack of co-operation with the other party in providing information or discussing the appeal; delays in providing information or other failures to adhere to deadlines; introducing fresh and substantive evidence at a late stage; not completing a timely SoCG; and, providing information that is shown to be manifestly inaccurate or untrue.
12. For substantive matters, the PPG makes it clear that the right of appeal should be exercised in a reasonable manner. Therefore, an appellant is at risk of a substantive award of costs being made against them if the appeal, or ground of appeal, had no reasonable prospect of succeeding.
13. I held a Case Management Conference (CMC) on 20 February 2024 with both main parties in attendance. I set out clear expectations in relation to the documentation each party was required to provide, with a deadline of 10 April 2024 for the submission of all documentation including a list of all Core Documents. This was set out in a Post-CMC note, dated 20 February 2024 and further detailed guidance was issued on 28 March 2024. In all of this correspondence, the expectation for the parties to work together in a co-operative manner was made clear.
14. It was therefore reasonable for the Council to expect a level of constructive engagement and co-operation from the appellant in advance of the 10 April deadline in order to ensure all inquiry documentation was properly compiled. The appellant has offered little evidence to demonstrate that they co-operated in this manner. Instead, the appellant delivered a bundle of documents to the Council's offices on 8 April and a further bundle on 10 April. The appellant does not dispute that this documentation was not accompanied with any covering statement, indexation, or other type of referencing. Therefore, the Council were left with the burden of sorting through this vast quantity of

documentation and collating it into an organised and properly referenced set of Core Documents.

15. It was unreasonable to expect the Council to, in effect, prepare the appellant's Core Documents for onward submission to the Planning Inspectorate. It was also highly presumptuous of the appellant to think that they could have access to the Council's resources to prepare their case. It was the appellant's responsibility to prepare their case and the associated documents for the inquiry, instead they passed this responsibility to the Council.
16. On 13 February 2024, well in advance of the April deadline, the Council prepared a draft SoCG and shared this with the appellant for comment and agreement. However, the appellant failed to make any meaningful comments or agree this by the 10 April deadline. Therefore, a SoCG was not provided for the appeal.
17. At the inquiry the appellant submitted late evidence in the form of a statutory declaration and an invoice for a boiler installation. I permitted this late evidence, and it did not result in the need for an adjournment. However, over the course of the two days of the inquiry the Council will have incurred additional costs in the time taken to review and respond to this evidence at such a late stage in the proceedings.
18. Furthermore, it can be seen from my decision that I have found significant inconsistencies, contradictions, and untruths in the appellant's evidence, and, by their own admission, they have 'manufactured' evidence to support their case. Therefore, the appellant has produced evidence that has been shown to be manifestly inaccurate and untrue.
19. I appreciate that the appellant was unrepresented in this case, and therefore they were likely to be unfamiliar with the appeal process and procedures. However, that did not remove the obligations placed on the appellant to be truthful and to comply with due process and procedure, regardless of a lack of professional representation. Therefore, this does not amount to a sufficient defence or mitigating circumstances in this case.
20. In relation to these procedural matters, the appellant has failed to co-operate with the Council and in doing so they have also failed to comply with the requirements and deadlines of the appeal process. In these respects, the appellant has acted unreasonably and caused the Council unnecessary costs in preparing for the appeal.
21. Turning now to substantive matters. The ground (d) appeal had no reasonable prospect of succeeding given the gaps in the appellant's evidence and the overall ambiguity and lack of precision. This was largely due to the submission of 'manufactured' evidence and untruths told by the appellant. Yet despite some of these admissions, the appellant pursued the ground (d) appeal through to the close of the inquiry. This constitutes unreasonable behaviour which caused the Council to incur unnecessary cost in dealing with this ground of appeal.
22. The ground (g) appeal also had no reasonable prospect of succeeding because it was not supported by any substantive evidence that could bring about that outcome. The short statement set out in the appeal form to address this ground of appeal was woefully inadequate in explaining why the compliance

period was said to be insufficient. Nor did the appellant's oral submissions at the inquiry provide a sufficient level of argument to supplement this. Crucially, there was no substantive evidence provided to support the ground (g) appeal. In fact, during the ground (g) discussion, the appellant acknowledged that all the current tenancies could be broken with only one month of notice.

23. Therefore, in pursuing this ground of appeal the appellant has behaved unreasonably and caused the Council to incur unnecessary costs in addressing this ground of appeal.

Conclusion and Costs Order

24. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.
25. 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 Imran Ashraf shall pay to the Council of the London Borough of Brent, 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.
26. The applicant is now invited to submit to Mr Ashraf, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J M Tweddle

INSPECTOR