The Planning Inspectorate

Costs Decision

Inquiry held on 1 October 2024

Site visit made on 1 October 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Costs application in relation to Appeal Ref: APP/T5150/C/24/3345632
60 The Ridgeway, London NW9 0UA

- 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 Rabbi Moshe Nissim Dadoun on behalf of RSM Property Investments Ltd.
- The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a building to the rear of the premises and its use for the cultivation of drugs.

Decision

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

The submissions for the Council

2. The costs application was submitted in writing.

The response by the appellant

3. The response was made orally at the inquiry, summarised as follows, with reference to the paragraph numbering in the Council's costs application:

   - The appeal ground (b) was contested as we considered that no change of use had occurred and that any use for the cultivation of drugs had ceased more than four years prior to the notice being issued. The appeal was justified (paragraphs 12-17).

   - The appeal on ground (c) was contested as we considered that the remnants of the 2005 unlawful building were not unlawful as the terms of the 2005 enforcement notice had been complied with and we therefore felt it was appropriate to contest the appeal on compliance with Class E of the GPDO[1] (paragraph 18).

   - In relation to the appeal on ground (d), the Council's submission lists a number of what they consider to be contradictory documents. Whilst there are some different dates offered they all amount to the development having been completed more than four years before the notice was served (paragraph 22).

   - The appellant only sought professional advice when he understood that an inquiry was going to take place. He had originally requested the written representations procedure but that was rejected in June 2024.

[1] Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

He then sought professional advice and agents were appointed on 31 July 2024.

- We acknowledge that there has been some disruption to the timetable as a result of the late involvement of a professional agent but we have sought to keep this to a minimum.
- The appellant was abroad and was not contactable so it was difficult to get accurate information, which has led to inaccuracies in the first statement.
- In relation to the request to change the expert witness and advocate roles, the planning witness was unwell in the week before the Inquiry, but in the end there was no need to change the arrangements.

Reasons

4. 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.

5. The PPG advises that costs may be awarded in relation to the process of the appeal, or in relation to the substance of the matter under appeal. Examples of behaviour that lead to a procedural award include introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen, prolonging the proceedings by introducing a new ground of appeal or issue, and providing information that is shown to be manifestly inaccurate or untrue.

6. Examples of the kinds of behaviour that can lead to a substantive award include where a ground of appeal is pursued that has no reasonable prospect of succeeding.

Procedural

7. The appellant did not instruct a professional agent until 31 July, despite having lodged the appeal on 4 June. The appellant was advised by the Planning Inspectorate on 19 June[2] that the appeal would be proceeding by way of an inquiry and the timetable was set out. The Inquiry Statement was due on 31 July but as a result of the late instruction of the professional agent an extension until 2 August was given by the Planning Inspectorate and, additional time was also given for any final comments (27 August). This gave limited time for the Council to respond to the additional evidence and new grounds of appeal prior to the provision of their Proof of Evidence by 3 September.

8. The late instruction of a professional agent and the resulting delay to the timetable was unreasonable behaviour on the part of the appellant. However, the Council would have had to respond to the additional grounds of appeal in any event, and they have not explained how the unreasonable behaviour resulted in unnecessary or wasted expense.

9. The appellant provided a list of witnesses who would be giving evidence at the Inquiry. Two working days before the Inquiry, on 27 September, the appellant informed the Planning Inspectorate and the Council that three of the witnesses

[2] By the 'start' letter

would not be appearing. They also stated the roles of the advocate and the planning witness were to be swapped. The Council spent time in preparing their response to the evidence that the witnesses were likely to put forward. However, the witnesses provided witness statements, to which the Council would in any event have needed to respond. It is not clear how swapping the roles of the advocate and planning witness would have resulted in additional expense for the Council. Therefore, the Council has not shown how the changes to the witnesses resulted in wasted or unnecessary expenses.

10. The appellant presented additional evidence to the Inquiry in the form of an invoice[3] from the Council in relation to the costs of direct action following the 2005 enforcement notice on the land. The invoice was provided in an attempt to demonstrate that the Council considered that the requirements of the 2005 enforcement notice had been complied with. As the invoice was dated 2017 it was unclear why it was not provided earlier. Time was spent at the Inquiry while the Council responded to the invoice and provided some context for it. This could have been done prior to the Inquiry if the invoice had been submitted in accordance with the timetable. I find that it was unreasonable for the appellant to submit the invoice at such a late stage and it resulted in additional inquiry time, leading to unnecessary and wasted expense for the Council.

11. The Council states that the appellant provided information that was manifestly inaccurate and untrue and that the provision of such information has caused the Council unnecessary and wasted expense. It is clear from my decision that I have found the appellant's version of events is less than probable. While the appellant's evidence was not precise and unambiguous, I have not found that it was manifestly inaccurate and untrue.

12. The appellant produced a witness, Mr Narolski, who had limited English language ability but did not have an interpreter. However, it is not clear how this resulted in unnecessary or wasted expense for the Council.

Substantive

13. It was not unreasonable for the appellant to introduce an appeal on ground (b), as they were not aware of the Council's photographs of November 2023 giving evidence of the alleged use until the Council's Inquiry Statement was provided. The appellant was entitled to challenge the Council's evidence in this regard, and I do not agree that it was unreasonable to pursue the appeal.

14. In terms of the appeal on ground (c), the appellant did not put forward any firm evidence to demonstrate that the building was provided for purposes incidental to the enjoyment of 60 The Ridgeway as a dwellinghouse and was not able to explain when the permission granted by the GPDO was crystallised. There was no prospect of success on this ground of appeal, on the basis of the information put forward by the appellant. In fact, the appellant's own evidence undermined their case in this regard. It was therefore unreasonable of the appellant to make and pursue a case on ground (c). This meant that the Council incurred unnecessary and wasted expense in defending this ground of appeal and wasted time at the Inquiry.

[3] Invoice from Brent Council to RSM Property Investments Ltd dated 15/07/2008

15. The appeal on ground (d) was supported by some limited evidence, and while the appellant's evidence fell short of discharging the burden of proof, it was not contradictory. It was not the case that the ground of appeal had no prospect of success and the appellant was not unreasonable to pursue an appeal on ground (d).

Conclusion

16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the submission of late evidence (the invoice) during the Inquiry and the pursuit of an appeal on ground c), including wasted time at the Inquiry. A partial award of costs is therefore warranted.

Costs Order

17. 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 Rabbi Moshe Nissim Dadoun on behalf of RSM Property Investments Ltd shall pay to the Council of the London Borough of Brent, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the late evidence (the invoice) submitted during the Inquiry and defending the appeal on ground (c), including wasted time at the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.

    The applicant is now invited to submit to RSM Property Investments Ltd, 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.

N Thomas

INSPECTOR