



Costs Decision

Inquiry held on 7 November 2024

Site visit made on 7 November 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Costs application in relation to Appeals:

APP/L3625/C/24/3344444 and

APP/L3625/C/24/3345008

Duxhurst Farm, Duxhurst Lane, REIGATE, RH2 8QQ

- 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 Reigate and Banstead Borough Council for a partial award of costs against Mr Darryn and Mrs Emma Beasley.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a building.
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Decision

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

The submissions for Reigate and Banstead Borough Council

2. The costs application was submitted in writing in relation to the appellants' late withdrawal of the ground (d) appeal (only). The following additional points were made orally:
 - The Council accepts that the fact the ground (d) was withdrawn after the exchange of evidence is commendable and allowed the Council to cease work on that ground of appeal. But it did not undo all previous work in preparation.
 - The Council's case was based on publicly available evidence and with regard to established advice and caselaw. The appellants' mounting of a ground (d) without due diligence to such matters was unreasonable.
 - There was a lack of detail in the appellants' written evidence such that it was not open to deal with the grounds of appeal in any quicker way.

The response by Mr Darryn and Mrs Emma Beasley

3. The response was made in writing. The following additional points were made orally:
 - That the withdrawal of the ground (d) did not result in the change of the appeal format, which would have proceeded by means of inquiry in any event.

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. An aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. The PPG advises that costs can be awarded where an appeal is withdrawn without good reason.
6. In enforcement cases, the onus of proof on matters of fact is on the appellant. Rule 6(3) of the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, requires an appellant to provide an inquiry statement giving full details of their case. No such statement was provided. In addition to a failure to respond to an earlier planning contravention notice and a notice served under s330 of the Act, that left the Council to prepare its own case without the assistance of any substantive evidence in support of the appellants' ground (d) case.
7. Despite the benefit of professional representation throughout the appeals, the burden of proof on the appellants to demonstrate that the building was substantially completed four years prior to the service of the Notice only resulted in a single aerial photograph from April 2020 being produced. This only confirmed the unfinished condition of the building at that time.
8. However, it was not until after the appellant sought copies of the Council's proofs that the appellants withdrew the ground (d) appeal. Although the appellants state that the ground (d) was withdrawn within a matter of hours of their Counsel receiving a copy of the Council's proof of evidence, that document was available from 10 October 2024 - being the revised 4-week deadline date in accordance with the 2002 Rules. It was not until 3 days before the Inquiry that that ground of appeal was withdrawn.
9. I find the lack of engagement with the Council's attempts to apply their own due diligence to the enforcement investigation and the failure to provide a statement highlighting the substance of the ground (d) case, was unreasonable behaviour. It imposed a burden on the Council causing wasted expense through commitment of time and resources. Furthermore, no explanation or good reason was given to the Inquiry as to why that part of the appeal had been withdrawn.
10. As it is an appellant's burden to make out their case on a ground (d) appeal, that is often the trigger for the Inquiry format due to a necessity to hear evidence on oath. However, in this instance, the Council had initially raised concerns in relation to the appellants' intentions in constructing the new building. It was therefore somewhat of an inevitability that, in order to establish relevant facts surrounding the construction of the building, its use, and other relevant off-site considerations, the appeal would proceed by way of the Inquiry format in this s174 case. Even if the appellants had notified of the ground (d) earlier, the Inquiry would have proceeded regardless.
11. Notwithstanding, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the ground (d) appeal and a partial award of costs is therefore warranted.

Costs Order

12. 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 Darryn Beasley and Mrs Emma Beasley shall pay to Reigate and Banstead Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in researching and producing evidence relating to the ground (d) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Mr Darryn Beasley and Mrs Emma Beasley, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Hitchcock

INSPECTOR