



Costs Decision

Hearing held on 6 August and 31 October 2024

Site visit made on 31 October 2024

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Costs application in relation to Appeal Ref: APP/T5150/C/23/3329378
31 Brentfield, LONDON, NW10 8LS

Decision

1. The application for an award of costs is refused.

The submissions for the Council for the London Borough of Brent

2. The costs application was submitted in writing, and was made for a partial award in relation to Grounds (c) and (e).
3. It was made on both procedural and substantive grounds. In procedural terms, the Council said that it had written to the Appellant in respect of his unreasonable actions relating to cooperation prior to the Hearing. It says that he failed to engage constructively and that, had he done so, this could have led to the avoidance of the Hearing or it and the preparation for it being shorter.
4. The actions cited were that he failed to cooperate in the preparation of a Statement of Common Ground (SoCG) and he presented late evidence. On the latter, the Council said that I had warned him of the possible implications for a costs' application.
5. Had he not behaved in this manner, the Hearing might have been avoided or, at least, its duration would have been shortened.
6. The Appellant said that 10 companies had not been served with a copy of the Notice. He did not, however, provide any details on how they had been prejudiced, nor what cases they might have brought forward. He acted similarly when he later submitted letters from 8 occupiers of the site, whose authors said that they had not been aware of the serving of the Notice and would have appealed had they done so. Again, none of them provided any further evidence.
7. The Council's investigations found that the lease for the site from the property's owners, forbade the sub-letting without their formal written permission. None of the site's operators had received this written consent, so did not have an interest in the land.
8. This was unreasonable behaviour that led to unnecessary and wasted expense to the Council, it was claimed.

The response by Mr Prezemyslaw Zalecki

9. The response was made orally at the hearing.
10. The Appellant said that there had been a constructive discussion on the “baseline” situation, or lawful use of the site, and that this was a matter that would have to be considered in a Hearing in any event.
11. The issues relating to the claim on the Ground (e) case all stem from the Council’s decision not to formally seek information on ownership through a Planning Contravention Notice (‘PCN’). There was only a short period in which to lodge the appeal and make the Ground (e) case. Had the Council served a PCN, the matter might have been avoided. It was, therefore, the Council’s inaction, rather than his actions, that caused the problems.
12. There had been a full and active debate and, in the circumstances, he had not acted unreasonably.

Reasons

13. 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.
14. Whilst there might have been delays in the preparation of a SoCG, the Council has not demonstrated how this was solely down to the actions of the Appellant. Similarly, it did not explain how the appeal might “never have been made” but for the Appellant’s failure to “engage with the Council”, and I cannot see how this would have been an outcome.
15. Whilst it might have helped had he done so, I cannot find fault with the Appellant’s comment that it was not his job “to find out who was there”. By this, he meant to undertake the Council’s investigative role. Had the Council served a Planning Contravention Notice, or used other similar tools at its disposal, prior to the issuing of the Notice, a definitive list of interested parties might have been provided. That it did not, I found surprising. I agree with the Council’s comment that there was only so much it could do; however, it just did not do the most obvious of them in this instance.
16. Although I found that those users of the site that had not formally received written permission from the site’s owners did not have the necessary interest in the land to make an appeal, the point is arguable. On this matter, I was not pointed in the direction of case law on the matter by either party and, as a consequence, I find that the Appellant’s actions in this regard were not unreasonable.
17. The Appellant did submit evidence at the Hearing that might have been brought forward earlier. I said that there might be costs implications involved in this, but not that there would be. I found his behaviour in this regard to be unreasonable. However, I am not persuaded that this led to unnecessary or wasted expense, as this was dealt with as part of the wider Ground (e) arguments. As such, it took up little time at the Hearing and it has not been demonstrated that this led to wasted or unnecessary costs.

18. The Appellant, who was professionally represented in the Hearing, should have been aware that his Ground (c) appeal had no real prospect of success. It was based on his mistaken belief that there was what he refers to as a “baseline permitted use” of the land. This, he said, would allow a certain amount of ancillary parking, and the parking that he undertakes on the site should be assessed against that. As the Council set out in its submissions, a consequence of the manner in which the appeal site had been used following an earlier appeal against an enforcement notice issued by the Council was that there is no lawful use of the land. I found this to be unreasonable behaviour.
19. Where, as I was told was the case here during the Ground (e) discussions, a local planning authority resolves to take enforcement action against the use of land in a diligent manner, part of its actions would have been defining what is, or whether there is, a lawful use of the land. I have little doubt that this was a matter that the Council had addressed before issuing the Notice. The Appellant’s Ground (c) case was addressed in only three paragraphs of the Council’s Statement of Case. The discussions on this ground were concluded very swiftly in the Hearing. Although the actions were unreasonable, I find that it has not been demonstrated that this has led to unnecessary or wasted expense.

Conclusion

20. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

R Curnow

INSPECTOR