
Costs Decision

Inquiry opened on 25th November 2014

by Clive Whitehouse BA MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 December 2014

Costs application in relation to Appeal Ref: APP/X5210/C/14/2217197 15 Gayton Crescent, London NW3 1TT

- 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 Camden for a partial award of costs against Wendy Galway Cooper.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised erection of rear extensions.
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Decision

1. The application for a partial award of costs succeeds, in the terms set out in the Cost Order, below.

The submissions for the Council

2. The Council's application was made in writing and is listed as an inquiry document. The application was made essentially on the basis of the appellant's late withdrawal of the ground (d) appeal. This meant that the Council incurred unnecessary costs in gathering evidence to show that the rear extensions had not been substantially completed more than four years before the enforcement notice was issued.
3. In addition, the Council argues that the initial inclusion of ground (d) required the appeal to be heard by way of a public inquiry in order that evidence may be tested on oath. Without the ground (d) appeal, the case would have been dealt with by way of the much less costly written representations procedure.
4. It is submitted that the appellant behaved unreasonably by delaying the withdrawal of ground (d) until the late stage in the appeal process when proofs of evidence were exchanged. This resulted in wasted expense for the Council.

The response on behalf of Wendy Galway Cooper

5. The appellant behaved reasonably by withdrawing the ground (d) appeal before the inquiry. Because she had not been in residence at the relevant times, it has proved difficult to produce proof of when the works were completed, and she accepted that she would not be able to meet the standard of proof required.
6. The appellant requested a public inquiry because so much was at stake and because of the complexities resulting from the different elements to the works.

Also, the level of public interest warranted the public inquiry and it was the most appropriate procedure in this case, irrespective of the ground (d) issue. The appellant did not behave unreasonably.

Reasons

7. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
8. Concerning the choice of appeal procedure, the combination of the enforcement case with the linked section 78 planning appeal resulted in complexities that required careful scrutiny. Also, there was an intense level of local public interest in the planning merits of the case from a group of residents that had been accorded Rule 6 status for the purpose of the inquiry. These factors are evidenced by the fact that the inquiry extended over three days. I therefore consider that an inquiry was necessary even without the ground (d) appeal being pursued, and that the Council's costs arising from the choice of appeal procedure were not wasted.
9. It is to the appellant's credit that the ground (d) appeal was withdrawn before the inquiry, thereby saving a good deal of inquiry time. However, there is a long and well-documented planning history to this case (including photographs from nearby residents) and it should have been obvious to the appellant at an earlier stage that the claimed date of completion of the works given in response to the Planning Contravention notice in 2012 could not be substantiated. She would also have been aware of the dates of inspection of the works in progress by officers from the Council's Planning and Building Control departments as well as for the purposes of Council Tax and Electoral Registration
10. National Planning Practice Guidance on the award of cost includes the advice that "*Appellants are encouraged to withdraw their appeal at the earliest opportunity if ... for example they become aware that it stands little prospect of success*". I conclude that the appellant behaved unreasonably by delaying the withdrawal of the ground (d) appeal until proofs of evidence were exchanged. By that point the Council's Enforcement Officer had produced a detailed proof of evidence dealing in part with the ground (d) issue and including appendices and statements by officials of other Council departments.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is justified.

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 Wendy Galway Cooper shall pay to the Council of the London Borough of Camden, the costs of the appeal proceedings, limited to those costs incurred in preparing the parts of Mr G Bakall's proof of evidence and appendices that deal with the appeal on ground (d), and including the statements by a Council Planning (site inspector) and two Council Tax inspectors.

13. The applicant is now invited to submit to Wendy Galway Cooper, 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

C Whitehouse

INSPECTOR