



The Planning Inspectorate

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Your Ref:
Our Ref: APP/X5210/C/20/3260482
Date: 19 October 2021

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 174 AND 322
LAND AT FLATS 5-8 AND 50A HAVERSTOCK HILL, LONDON: APPEAL BY MR
ROBERT POLLAK (BROOMFIELD GROUP LTD): APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to refer to the Inspectorate's correspondence of 22 June 2021 confirming the withdrawal of the above appeal against an enforcement notice issued by the London Borough of Camden on 25 August 2020. The notice alleged the breach of planning control, namely;

"Without planning permission: Conversion from 2 x self-contained flats at first and second floor levels to 4 x self-contained flats" on land described above.

2. This letter deals with your Council's application for an award of costs against the appellants made in correspondence of 14 and 21 July 2021. The appellants' agents, Planning & Project Management Services, replied on behalf of the appellants in correspondence of 15 July 2021. As these representations have been disclosed to the parties it is not proposed to summarise them in any detail. They have been carefully considered.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 13 and 14 below. The costs application succeeds to the extent that a partial award of costs is being made.

Basis for dealing with the costs application

4. In planning and enforcement appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

The application for costs has been considered by reference to the Planning Practice Guidance on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

Reasons for the decision

5. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably by withdrawing the appeal when they did with the result that the Council incurred wasted or unnecessary expense in preparing to resist it in accordance with the set timetable. The policy guidance in paragraph 054 of the guidance is particularly relevant. The sequence of events leading to the withdrawal of the appeal has been carefully examined.

6. The enforcement notice was issued on 25 August 2020 and the appeal against the notice was received by the Inspectorate on 2 October 2020. The appeal was made on ground (a) and (d) under Section 174 (2) of the 1990 Act. The Inspectorate's Start letters of 8 January 2021 informed the parties that the appeal would be dealt with by the Inquiry procedure and set out the timetable for receipt of documents. The letter to the appellants' agents warned that withdrawal of the appeal without good reason at any stage could result in a successful application for costs and directed them to the costs guidance for further information, which could be found on the GOV.UK website. The Inspectorate's letter of 9 March 2021 informed the parties that an Inquiry had been arranged to take place on 22 June 2021. Both parties' statements were received by the Inspectorate on 19 February 2021. On 25 May 2021 the Inspectorate received the Council's proof of evidence and a proof of evidence of the managing agent of the appeal property in support of the appellants' case. On 11 June 2021 the appellants requested that the Inquiry be postponed as they were having problems producing their own proof of evidence due to IT issues. This request was refused by the Inspectorate on 14 June 2021. The appeal was withdrawn on 21 June 2021.

Conclusions

7. As the appeal has been withdrawn, thus ending the proceedings, the issues arising on the appeal remain unresolved as they have not been tested by an appointed Inspector after assessing all the evidence before him and after cross-examination at the Inquiry. Therefore, it is not possible to assess the reasonableness of either party's case on appeal and the Secretary of State has no further jurisdiction in the matter. The only issue before the Secretary of State to consider is whether or not the appellants acted unreasonably by withdrawing the appeal when they did.

8. Paragraph 054 of the guidance warns that, if an appeal is withdrawn without any material change in the planning authority's case or any other material change in circumstances, relevant to the planning issues arising on the appeal, appellants are at risk of an award of costs against them if there are no other exceptional circumstances and the claiming party can show that they have incurred quantifiable wasted expense as a result. The Secretary of State has to decide whether the appellants had good reason for the withdrawal due to a material change in circumstances or whether there are any other exceptional circumstances.

9. In this case, the appeal was withdrawn some 8 months after it was submitted. The appellants' decision to withdraw the appeal when they did, needed to be weighed against the risk of an award of costs. This risk was brought to the appellants' attention, via their agents, in procedural correspondence from the Inspectorate. The view is taken that the appellants would, or should, have been aware that by

withdrawing the appeal when they did the Council would have incurred costs in preparing to resist the appeal in accordance with the Inspectorate's set timetable.

10. The right of appeal is a statutory right, but it is expected that it will be exercised in a reasonable manner and as a last resort. When deciding to appeal appellants have a responsibility to pursue it through to a decision unless a material change in circumstances relevant to the planning issues arising on the appeal occurs. In this case, it appears clear that the appellants decided to withdraw the appeal as their agents were having problems submitting their proof of evidence due to IT issues. Their agents have produced an email trail demonstrating that they attempted to resolve the problem in time for the deadline but to no avail. It is noted that the agents requested the Inquiry be postponed, which was subsequently refused. However, while the Secretary of State accepts that the appellants' agents made every effort to resolve the IT issues and recover the proof of evidence, it is not clear why they did not try an alternative way of producing the documents, such as re-writing and/or obtaining copies of the relevant evidence they intended to rely on. Failing that, it was open to the appellants to continue with the appeal based on the evidence they had already provided with their statement and the proof of evidence produced by the property management agent. Instead, they decided not to have the evidence tested by the Inspector and to withdraw the appeal instead.

11. On the evidence available, the Secretary of State is not satisfied there was a material change in circumstances relevant to the planning issues arising on the appeal, or any other exceptional circumstances to justify the appellants' decision to withdraw the appeal when they did. The result of the appellants' actions was to cause the Council to incur wasted or unnecessary expense in having to resist the appeal in accordance with the Inspectorate's set timetable and in preparation for attending the arranged Inquiry. An award of costs will therefore be made.

12. As to the extent of the award, the view is taken that the Inspectorate's letter of 8 January 2021 gave sufficient warning to the appellants that withdrawal of an appeal without good reason, at any time in the appeal process, could result in an award of costs against them. The appellants therefore had adequate opportunity, from that date, to consider their position in relation to the risk of costs. Consequently, it is considered that a partial award of costs from 23 January 2021 (inclusive) is justified. This date allows a nominal period of two weeks for the appellants to have fully considered the warning on costs.

FORMAL DECISION

13. For these reasons, the Secretary of State concludes that the appellants acted unreasonably and caused the Council to incur wasted or unnecessary expense as a result. A partial award of costs is therefore considered justified in the particular circumstances.

COSTS ORDER

14. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, sections 174 and 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that Mr Robert Pollak (Broomfield Group Ltd) shall pay to the London Borough of Camden their costs of the abortive appeal proceedings before the Secretary of State, limited to the costs incurred from 23 January 2021; such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The Council are now invited to submit to Mr Alvin Ormonde of Planning and Project Management Services, details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to him.

Yours faithfully

K McEntee

KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf