



Costs Decision

Inquiry opened on 15 November 2016

Site visit made on 16 November 2016

by Pete Drew BSc (Hons), DipTP (Dist) MRTPI

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

Decision date: 29 December 2016

Costs application in relation to Appeal Ref: APP/P4605/C/15/3129371 36 Langleys Road, Selly Oak, Birmingham B29 6HP

- 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 Birmingham City Council for a full or, in the alternative, a partial award of costs against Mr I Hussain.
 - The appeal was made against the Council's decision to issue an enforcement notice that alleged: *Without planning permission, the material change of use of the premises to a large House in Multiple Occupation (Sui Generis)*.
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Formal Decision and Costs Order

1. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, IT IS HEREBY ORDERED that Mr I Hussain shall pay to Birmingham City Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
2. The Applicant is now invited to submit to Mr I Hussain, to whom a copy of this decision has been sent, the 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 Court Costs Office is attached.

The case for Birmingham City Council

3. The Council's case was made in writing and since there is a public record of that submission no purpose would be served by reciting it here. Paragraph 9 was however supplemented insofar as it was said that the situation was comparable to a nullity and therefore costs should be awarded.
4. Paragraph 10 was also supplemented by reference to Mr Hussain's closing, which raises a concern that the Council's Statement of Case did not indicate that it would be claiming deception and so, the proposition is, that it cannot raise it. However the Council says that if it were common ground that there had been deception then fairness and common sense should dictate that the fact that it had not been pled should not prevent reliance upon the argument.
5. It is also said that Mr Hussain was not responsible for Council Tax records or for the terms of the 2013 planning application, in relation to which a drawing shows the garage conversion as one room, because they did not come directly from him. However the Council says that there is no support for the proposition and, as such, it should not be endorsed. In terms of immunity the question is whether the Council was prevented from taking enforcement action by the information received, e.g. from Easy Lettings and the terms of the 2013

planning application. The Council says that it has not been in a position to accurately review whether it was expedient to issue an enforcement notice because this material did not portray the true position. Finally it is said that the fact that the issue relates to the interior of a house is material to this issue.

The response on behalf of Mr I Hussain

6. The application is resisted and it is denied that there has been unreasonable behaviour. In terms of Mr Hussain's standing what is said in his closing is adopted in response. Turning to ground (d) Mr Hussain's case is respectable and arguable. Mr Hussain's case does not merely comprise of a bare assertion, but has been corroborated to a greater or lesser degree by 4 other witnesses' evidence on oath and contemporaneous documentary evidence. It has been a good old fashioned dispute of fact that is common at such enforcement inquiries. As such it was legitimate to pursue the ground (d).
7. Any uncertainty in Mr Hussain's personal evidence can be attributed to the fact that can be inferred from the submitted documents that he has delegated responsibility for letting the property to an Agent. In this context attention is drawn to paragraph 18(g) of the Council's closing submission. It is said that Mr Hussain could have been more convincingly criticised if he had let the property himself. In those circumstances one would expect him to have a firm understanding of what had gone on. However given his evidence that he has had no hands on conduct of the tenants there is more scope to give him the benefit of the doubt with regard to any inaccuracies.
8. In terms of deception, Mr Hussain's closing is adopted in response to this application. It has not been suggested that the contemporaneous documents have been forged or were not completed when they were said to have been.
9. In paragraph 13 of the costs application the Council expresses confidence that absent ground (d) the appeal would have been dealt with on the basis of written representations, but this is considered to be a leap too far. There is still ground (g) and given that up to the exchange of proofs the nature of the lawful baseline appeared to be in dispute it might be that the written representation method would not have been apposite.
10. For all of the above reasons it is submitted that the application should fail.

Final response on behalf of Birmingham City Council

11. The submissions suggest that if Mr I Hussain has not given direct evidence which is untrue, he is saved, such that he can hide behind the veil that the incorrect information was provided by his Agent or employee. However this is not correct. An Agent, by nature, sits as the fuse of the primary person but also provides information that is shown to be manifestly inaccurate or untrue [as per the Planning Practice Guidance [hereinafter 'the Guidance'], at paragraph ID 16-052-20140306]. The Council therefore submits that who provides the information does not matter and that if any element of Mr Hussain's case is manifestly inaccurate then the principle is engaged.

Record of dispute between the parties in relation to the costs submission

12. As part of the response on behalf of Mr I Hussain, which I have not recorded above, it was suggested that it was never put to any of Mr Hussain's witnesses that they had been untruthful. I accept this is true in respect of all other witnesses except Mr Hussain. As I indicated at the Inquiry, I consider that his integrity was questioned towards the end of the cross-examination. My contemporaneous note records that the question was initially couched in terms of his evidence being "*manifestly inaccurate*", but it was then said that he had "*misled*" the Council which, for the record, Mr Hussain denied.

Reasons

13. The Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. For reasons given in my main decision I have concluded that since Mr I Hussain was not a person having an interest in the land or a relevant occupier on the date that the appeal was brought he had no legal standing to bring the appeal. The appeal form indicates that Mr Hussain purported to lodge the appeal in his capacity as an owner of the land, but that was plainly wrong. However this was only corrected in his proof of evidence, which was submitted to PINS less than a month before the Inquiry was convened. At this stage the Council had already incurred expense in the appeal process, e.g. in preparation of proofs. Whilst I appreciate that the appeal form was completed by Mr Hussain's Agent it is appropriate to conclude that this was as a result of a direct instruction to that effect from Mr Hussain. This finding is consistent with other documents that are before the Inquiry, which I have examined in my main decision.
15. Having raised the matter in opening it was appropriate for the Inquiry to run its full course, to hear the evidence for both sides and, amongst other things, hear submissions with regard to Mr Hussain's standing. However, having concluded that Mr Hussain has not discharged the onus of proof to show that he has an interest in the land in order to bring the appeal, in my view it follows that he has acted unreasonably in bringing the appeal in the first place and thereby causing the Inquiry to be convened¹. It is ultimately the case that Mr Hussain's claim to be an owner is manifestly inaccurate or untrue, which is an example of unreasonable behaviour in the Guidance².
16. I have no doubt that the Council has been put to considerable expense in having to rebut the appeal, including: (i) the evidence advanced in relation to ground (d); (ii) the merits of the development; and, (iii) to a lesser extent, contesting the ground (g). Apart from Officer time, it also incurred the additional costs of instructing Counsel to present its case at the Inquiry. For these reasons it is clear that Mr Hussain's unreasonable behaviour has directly caused the Council to incur unnecessary expense in the appeal process.
17. Since the application was made at the appropriate time and the tests for an award of costs in the Guidance³ are met, it is appropriate to make a full award of costs. Given that Mr Hussain had no interest in the land it should not have been necessary for the matter to come before an Inspector. In those circumstances no purpose would be served in considering the other basis on which the application for an award of costs is advanced.

Conclusion

18. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated. It is therefore appropriate to make a full award of costs as set out in the formal decision and costs order.

Pete Drew
INSPECTOR

¹ Section F of the appeal form sets out reasons why Mr Hussain said an Inquiry was necessary. It is not immaterial that in an email dated 26 August 2015 the Council indicated that it did not consider that an Inquiry was necessary.

² Paragraph ID 16-052-20140306.

³ Paragraph ID 16-030-20140306.