

Costs Decision

Site visit made on 2 November 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 19 December 2016

Costs application in relation to Appeal Ref: APP/Z5060/C/16/3146657

10 Wilthorne Gardens, Dagenham, Essex, RM10 9TR

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Barking & Dagenham for a partial award of costs against Ms D Stanimirova.
 - The appeal was against an enforcement notice alleging "*Without planning permission, the unauthorised material change of use of a single family dwelling house to that of a House in Multiple Occupation.*"
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Decision

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

National guidance

2. National guidance on awards of costs is set out in 'Planning Practice Guidance' [PPG]¹. Paragraph 28 states that in planning appeals and other planning proceedings parties normally meet their own expenses. All parties are expected to behave reasonably. Where a party has behaved unreasonably, and this directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The PPG makes it clear that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
4. This may occur when, for example, the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.

Submissions made on behalf of the Council

5. The application for costs relates to the appeal made on ground (a) only. The Council's case is that the appellant advanced a planning merits argument that was based on a deliberate misinterpretation of planning policy. The policy in question is BC4 (*Residential Conversions and Houses in Multiple Occupation*) of the Borough Wide

¹ *Planning Practice Guidance* is a web-based resource that was launched by the Department for Communities and Local Government on 6 March 2014. It provides, among other things, national guidance on costs awards, replacing the guidance formerly provided by Circular 03/2009.

Development Policies DPD (2011). The DPD forms part of the Council's Local Development Framework.

6. Planning permission had been refused for the same development on the same policy basis. The appellant was aware not only of the particular development policy that applied to this form of development, but also to the correct interpretation of that policy.
7. The appellant's agent was told of this misinterpretation of the policy in time for the matter to be reconsidered or the ground (a) appeal withdrawn, but no action was taken.
8. In these circumstances the appellant's decision to pursue the ground (a) appeal amounted to unreasonable behaviour which caused the Council to incur expense unnecessarily. These costs should be the subject of an award.

Submissions made on behalf of the appellant, Ms D Stanimirova

9. The appellant's agent, responding on his client's behalf, refutes the Council's assertion of unreasonable behaviour leading to unnecessary expense.
10. In his submission, there was no 'deliberate misinterpretation' of the policy. The core to the decision making process is the interpretation of policy. At an appeal it is not unusual for there to be a disagreement between the parties about such matters, with the final decision resting with the Inspector. To claim a wrong interpretation of a policy is not sufficient justification for an award of costs.
11. Policy BC4 seeks to resist proposals that involve the loss of housing with 3 bedrooms or more. Paragraph 3.4.2 of the supporting text sets out the reasoned justification of the policy and refers to "*particularly a 4 bedroom house*". The appeal proposal concerns a 5 bedroom house.
12. The Council has claimed that the time spent on preparing the appeal documentation was three hours. However, the policy issue is just one of the issues in the ground (a) appeal, and there was also an appeal on ground (g). If a costs award is found to be justified, it should be made in respect of a portion of preparation time claimed.

Reasons

13. In an appeal such as this, there are two primary matters for consideration; first, whether there is a conflict with the development plan and secondly, if so, whether other material considerations have been advanced to indicate that the decision should have been made otherwise than in accordance with the plan.
14. The main objective of policy BC4 is to address the loss of family homes in the Borough and ensure that the current housing deficit is not worsened by further flat conversions and HMOs. This objective will be achieved by resisting proposals which involve the loss of housing with 3 bedrooms or more.
15. The unauthorised HMO use has resulted in the loss of a single family 5 bedroom dwellinghouse and therefore fails to comply with the policy. The point made by the appellant is the final sentence of paragraph 11 above is irrelevant.
16. Policy BC4 also deals with proposals that involve the conversion of properties other than those which are houses with 3 bedrooms or more. These proposals are assessed against 5 criteria. The appellant argues that the HMO use of the appeal property complies with these criteria.
17. The Council disputes the relevance of the criteria to the appeal development and contests the appellant's assertion that there is compliance with all of them, arguing that the 2nd criterion is not met.

18. It is not uncommon in planning and enforcement appeals for the main parties to adopt opposing positions on the correct interpretation of a development plan policy. The appeal process provides an opportunity for both sides to put forward their reasons for applying the policy in the way they have.
19. Clearly the 5 criteria listed in the policy apply only to the conversion of properties other than houses with 3 bedrooms or more, but they are useful in assessing the 'materiality' of a change of use that is proposed or has occurred. They identify some of the planning consequences that can flow from an HMO use and the types of harm that the Council is seeking to avoid. Lack of any discernible harm might form the basis of a 'material considerations' argument to set against the policy conflict.
20. It will be evident from my appeal decision that I found that the appeal development is not in accordance with the development plan and that there are no material considerations of sufficient weight to overcome the strong policy objection to it. Nevertheless, my view overall is that the appellant was entitled to run the ground (a) argument as she did and it was not wholly unreasonable for her to do so.
21. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a partial award of costs is not justified.

George Mapson

INSPECTOR