
Costs Decisions

Inquiry held on 11 April 2017

Site visit made on 11 April 2017

by K R Saward Solicitor

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

Decision date: 26 April 2017

Costs applications in relation to Appeal Ref: APP/G5750/C/16/3153044 75 Meanley Road, Manor Park, London E12 6AP

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is made by the Council of the London Borough of Newham against Lokman Hossen.
 - **Application B** is made by Lokman Hossen for a full award of costs against the Council of the London Borough of Newham.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use to a house in multiple occupation (HMO).
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Decisions

Application A

1. The application for an award of costs is allowed in the terms set out below.

Application B

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

Preliminary matters

3. Both applications and responses were made in writing prior to the date of the Inquiry. Brief additional comments were made orally by the parties at the Inquiry on whether additional costs had been incurred in relation to the appellant's arguments brought under ground (b) being subsumed within ground (c). As a purely procedural point on how the arguments raised should be addressed, this had no implications in terms of extra time spent for either side.
4. The Council's application relates to substantive matters. The appellant's application relates to both procedural and substantive matters.
5. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process, as advised in paragraph 030 of the *Appeals* section of the Planning Practice Guidance (PPG).

Reasons

6. The enforcement notice issued by the Council alleged a material change of use (of a single dwelling) to a House in Multiple Occupation (HMO). Whilst an
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appeal had been brought on ground (b), there was in fact no dispute that a change of use to a HMO had taken place. The point in dispute was whether the HMO needed express planning permission which was an argument most relevant to ground (c).

7. The appellant contended that occupation had never exceeded six residents. He relied on a note on the Licence issued for the use of the property as a HMO under the Housing Act 2004 which states "Any HMO for more than 6 people will also require planning permission." It was argued that by implication this meant that a HMO use for 6 or less people did not need planning permission.
8. Ordinarily, a planning application would not be needed if occupation were so limited had the Council not made an Article 4 Direction. This had the effect of removing permitted development rights to make a change of use from a single dwelling to a small HMO up to six occupiers without express planning permission. The Direction was in force when the change of use commenced.
9. Based on information received from a tenant during a site visit, the Council maintained that there were in fact nine occupants, but planning permission was needed regardless of the number. The Council was correct in its assertion that it made no difference whether there were six or nine occupants. This was because planning permission was needed for a HMO whatever the size. Even if the appellant was right and there were up to six occupiers, he still needed to apply for planning permission because of the Article 4 Direction.
10. Thus, the appellant's legal argument was seriously flawed and based on a failure to recognise the significance of the Article 4 Direction. The Direction was in force and had effect. It could not be set aside or overruled by the HMO Property Licence. The appellant was professionally represented throughout and it should have been abundantly clear that he could not succeed with his ground (b) or (c) appeal when planning permission clearly was required even if there were only six residents. The Council was put to the cost of defending its position. Indeed, much of the evidence and Inquiry time was spent on evidence over the numbers of occupiers because of arguments raised by the appellant in this context.
11. The appellant had not obtained planning permission and so it was not unreasonable for the Council to issue an enforcement notice against the unauthorised use.
12. At the Inquiry, it was argued for the appellant under ground (a) that the Licence contained Council policy upon which the appellant was entitled to rely. The stance taken by the appellant indicated a fundamental misunderstanding over the different roles of the Council in its capacity in administering the licensing regime for HMO's and as local planning authority. The appellant may not have appreciated the distinction, but with professional representation it should have been realised that they are completely separate regimes.
13. As such, the fact that a licence was issued under the Housing Act 2004 on 7 April 2016 when the Council's Planning Enforcement Officer had only visited on 4 April 2016 did not mean planning permission was not required. There was nothing remiss in the Council only disclosing full details of information obtained at its site visit upon submission of its Appeal Statement. The Council had warned of the pending issue of an enforcement notice which gave the

reasons for its issue. Opportunity was given and taken to respond to the information the Council said it had obtained from a tenant.

14. The appellant claims to have successfully argued a case on ground (a) that planning permission ought to be granted. In fact no arguments were made at all to justify the use as a HMO on policy grounds or to address the policy objections raised by the Council as set out in the notice. One of the examples given in the PPG of where an appellant is at risk of an award of costs is where 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 material considerations are advanced, there is inadequate supporting information.
15. Instead of providing arguments on the planning merits the appellant sought to rely upon the fact that a HMO Licence had been granted with various fees paid and a perceived failure by the Council to advise that planning permission was required. Neither argument provided sound basis for the grant of planning permission. Even if the Council had been remiss in its advice or the information available on its website, this could only ever explain why planning permission had not been obtained. It could not waive the need for planning permission. Similarly, the note on the Licence referenced above may have misled the appellant into believing that planning permission was not required if he limited occupation to six people, but it did not obviate the need for such permission.
16. I understand that the appellant feels aggrieved from his dealings with the Council, but none of these issues would give reason to justify the grant of planning permission contrary to the development plan. Whether the appellant has cause for complaint over any failings in advice is a matter which would need to be taken up with the Council separately.
17. The arguments advanced by the appellant did not grasp the relevance of the development plan and confused housing legislation with planning policy. The case was so poor on ground (a) that it was unreasonable to pursue and persist with it.
18. The appeal on ground (f) was brought on the basis that the HMO Licence could be amended to allow six rather than seven occupants. Clearly, a Licence issued under a different regime cannot be altered in a planning appeal and would not address the planning harm in any event. This argument could not succeed and was an unreasonable line to take. This appeared to be realised by the appellant's advocate at the Inquiry whereupon the position was altered to argue for a variation of the notice to allow six occupiers instead of cessation of the HMO use altogether. Even then, the case was scant and as the planning harm had never been tackled by the appellant it was a stance that was bound to fail. There was nothing unreasonable in the Council seeking to remedy the breach of planning control by requiring cessation of the use.
19. Thus, the lines of argument taken in pursuit of the appeal had no real prospect of success and caused the Council to incur unnecessary costs in defending the notice.

Conclusion

20. For the reasons given, no award of costs is justified on Application B. However,

in relation to Application A, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

21. 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 Lokman Hossen shall pay to the Council of the London Borough of Newham, the costs of the appeal proceedings; 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.
22. The Council is now invited to submit to Lokman Hossen, to whose representative 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.

KR Seward

INSPECTOR