
Costs Decision

Site visit made on 9 April 2018

by B Bowker Mplan MRTPI

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

Decision date: 10th May 2018

Costs application in relation to Appeal Ref: APP/U5930/W/17/3181188 3 Cheltenham Road, Leyton E10 6EU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Bobby Lipman for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of planning permission for development described as *'an outbuilding to be used for storage and a garage incidental to the use of the dwellinghouse at the property (existing)'*.
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Decision

1. The application for an award of costs is allowed, for the reasons given below.

Reasons

2. The National Planning Practice Guidance states that parties in planning appeals and other planning proceedings normally meet their own expenses and that 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.
3. With reference to an enforcement appeal decision¹ at the site, the appellant contends that the Council could have waived or relaxed any requirements of the enforcement notice under Section 173A of the Town and Country Planning Act 1990. In addition, the appellant contends that the Council did not engage with the appellant as prompted by the Inspector dealing with the enforcement appeal. Furthermore the appellant contends that the Council failed to take into account a valid fall-back position with reference to a certificate of lawfulness² issued by the Council for an identical building.
4. Whilst I note the difficulties experienced by the appellant, the timeline of events and summary of correspondence set out³ occurred before the submission of the appeal proposal. Similarly the contention relating to the enforcement notice falls outside the remit of the cost application. The Council contend that they refused the appeal proposal on relevant policy grounds and that all relevant material considerations were taken into account. However, based on the evidence before me, the Council's decision did not take into account the fall-back position set by the certificate of lawfulness issued for an identical proposal at the site. Furthermore the legality of the certificate of

¹ APP/U5930/C/16/3152847, decision date 9 February 2017.

² Council ref 2014/1279/CLP, dated 30 July 2014. The relevant plans and decision notice have been submitted within the papers that accompany the appellant's appeal statement.

³ Within the accompanying papers to the appellant's appeal statement.

lawfulness is not queried or contested by the Council. As I have found no harm in relation to the case put forward by the Council, the fall-back position has not been a determinative factor in the accompanying appeal decision. However based on the evidence before me, the fall-back position was a significant and determinative factor that the Council should have taken into account in reaching its decision. In this respect, the Council demonstrated unreasonable behaviour that has resulted in the appellant incurring unnecessary and wasted expense in having to appeal the decision.

5. Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated. For this reason, and having regard to all matters raised, a full award for costs is justified.

Costs Order

6. 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 the Council of the London Borough of Waltham Forest shall pay to Mr Bobby Lipman the full costs of the appeal proceedings described in the heading of this decision.
7. The applicant is now invited to submit to the Council of the London Borough of Waltham Forest, to whom 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 Cost Office is enclosed.

B Bowker

INSPECTOR