



Costs Decisions

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by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **5th October 2020**

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Costs applications in relation to Appeals Ref: APP/Z5060/C/19/3242275 (Application A) and APP/Z5060/C/19/3242276 (Application B) 8 Sherwood Gardens, Barking, Essex IG11 9TH

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Mr Zahid Iqbal (Application A) and Mrs Elaine Atkinson (Application B) for full awards of costs against the Council of the London Borough of Barking & Dagenham.
- The appeals were against an enforcement notice alleging the unauthorised material change of use of a dwellinghouse to a House of Multiple Occupation (HMO).

Decisions – Applications A and B

1. The applications for awards of costs are refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may 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. The applicants claim that the Council acted unreasonably in 3 respects, which can be summarised as follows:
 - It did not produce evidence to substantiate its case.
 - It made only vague, generalised or inaccurate assertions, unsupported by objective analysis, about the impact and harm of the alleged breach.
 - It did not review its stance upon receipt of the appellants' statements.
4. The Council has not responded to these claims.
5. The power to issue an enforcement notice is discretionary and may be exercised by a Council when it appears to it that there has been a breach of planning control and it considers it expedient to do so. The reasons for issuing the notice, set out in section 4, confirm that it appeared to the Council that the alleged breach of planning control had occurred within the preceding 10 years. It is also clear that regard had been paid to development plan policies, including one that seeks to protect family housing and restrict the development

of HMOs¹, and that other material considerations were considered in deciding to issue the notice.

6. The Courts have determined that it is not necessary for a Council to satisfy itself beyond doubt that a breach has occurred; rather it is for an appellant to establish such grounds². Evidence of 10 years' or more use as an HMO, such as that provided by the applicants, could have been sought by the Council before it decided to issue the notice. However, it was also open to the applicants to volunteer that evidence at that time and it has not been demonstrated that its subsequent provision in the appeal process led them to incur unnecessary or wasted expense in comparison.
7. While the Direction³ that came into force on 14 May 2012 did not prove germane to whether the HMO use was immune from enforcement action in the appeals on ground (d), it was not necessary for the Council to determine the precise date on which the change of use had occurred. No evidence has been provided of additional expense being incurred by the applicants as a result of the Council's reference to the Direction.
8. The Council did not produce evidence to support its contention, in the reasons for issuing the notice, that the HMO use had caused noise and disturbance to neighbours or exacerbated the shortfall of car parking in the area. While this appears to be unreasonable behaviour, the applicants dealt with those issues briefly, largely by pointing out the absence of evidence on the Council's part. It has not been shown that they incurred unnecessary or wasted expense, such as commissioning specialist advice, in doing so. The Council's reasons for issuing the notice do not include any suggestion of harm in terms of setting, context, form, scale and distinctiveness, so no expense should have been incurred in respect of those matters.
9. The Council could have reconsidered its position in light of the evidence submitted by the applicants, who might in turn have been spared any further work. It is difficult to draw a firm conclusion on this matter in the absence of comment from the Council. However, the brevity of the applicants' further submissions and the fact that they represented themselves, suggests that no significant additional expenditure was incurred as a result of the Council maintaining its stance.

Conclusions – Applications A and B

10. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Harbottle

INSPECTOR

¹ Policy BC4 of the Barking and Dagenham Borough Wide Development Policies Development Plan Document

² Ferris v SSE [1988] JPL 777

³ Made under Article 4(1) Town and Country Planning (General Permitted Development) Order 1995 as amended