



Costs Decision

Site visit made on 7 September 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6th November 2020

Costs application in relation to Appeal B Ref: APP/U5930/C/3252906 & Appeal C Ref: APP/U5930/C/3252907, 41 Bulwer Road, London, E11 1DE

- The application is 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 application is made by Raheel Mirza and Adeel Mirza for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against an enforcement notice alleging material change of use of dwellinghouse to four self-contained flats and one self-contained studio flat.
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Decision

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

Reasons

2. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted cost in the appeal process.
3. The applicants' case is that the Council were unreasonable in not granting the certificate of lawful use or development relating to the use as 5 self-contained units submitted on 5 November 2019 and then in issuing the enforcement notice, as the change of use had been proven on the balance of probability and in line with Planning Policy Guidance. In particular, the appellants argue that the Council did not afford sufficient weight to the signed statements submitted with the LDC application, did not provide their own evidence regarding the use of the property, failed to consider the totality of the evidence, applied a higher level of proof than the balance of probability and did not acknowledge that it was open to them to find the change of use in relation to individual units within the property.
4. Planning Policy Guidance provides that the applicant is responsible for providing sufficient information to support an application and the Council was therefore not obliged to obtain its own evidence. The Council was not satisfied that the applicant had provided sufficient evidence within the LDC application to prove on a balance of probability that there had been a material change of use for the relevant continuous period. Although I have come to a different conclusion, I do not consider that the Council's decision in relation to the LDC application and the subsequent issuing of the notice was unreasonable on the basis of the evidence before it (including the unsworn statements), and it satisfactorily explained why it came to the decision it did. There is no evidence that the

Council applied a higher standard of proof or failed to consider the applicants' case fully.

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Policy Guidance, has not been demonstrated.

Zoë Franks

INSPECTOR