The Planning Inspectorate

Costs Decision

Site visit made on 10 November 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Costs application in relation to Appeal Ref: APP/N5660/C/19/3241093
5 Glenister Park Road, London SW16 5DS

- 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 the Council of the London Borough of Lambeth for a full award of costs against Mr Vincenzo Giordano.
- The appeal was against an enforcement notice alleging the material change of use of the premises from a single dwellinghouse to five self-contained flats.

Decision

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

Background

2. The Planning Practice Guidance (the Guidance) 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 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.

Reasons

4. The Council regards the fact that the appellant submitted his appeal under ground (b) and ground (c) as unreasonable because, in its opinion, this results in the appellants seeking to adopt two diametrically opposed standpoints. There is no reason why an appellant should not appeal on both of these grounds and entirely feasible that if an appeal fails on the basis that the alleged development has not occurred, it may achieve success because what is alleged in the notice does not constitute a breach of planning control. Similarly, there is no reason why the appellant should not appeal under grounds (b) and (d) and present his evidence accordingly.

5. In this case the appellant has adopted a consistent approach in arguing that the development which has taken place is a change of use to an HMO and has provided evidence in that regard. He has not sought to argue that the works have and have not occurred as alleged by the Council.

6. The appellant has referred to matters under his ground (b) appeal which are more appropriately dealt with under ground (f) and he acknowledges this in his

later comments. However, it is clear from his appeal form that he has appealed on both grounds and whilst confusing he has not acted unreasonably in presenting his evidence under the incorrect ground and his case as a whole is clear on these grounds. As a consequence, the Council's statement that the appellant has failed to submit evidence under ground (f) is inaccurate.

7. Even taking the appellant's case as a whole he has not provided any evidence to support his appeal under ground (d), which should demonstrate that the breach of planning control is immune from enforcement action. His arguments under ground (d) are based on his view that there has been no breach of planning control. This argument is not relevant to ground (d). In the absence of any evidence to show either that the use alleged in the notice or the HMO use, which the appellant says is occurring, is immune from enforcement action the appellant has acted unreasonably.

8. The Council is critical of the timeframe given in the appellant's appeal under ground (g). It will be seen from my decision that I have not been persuaded that the compliance period should be extended. Nevertheless, the appellant has given reasons for arguing that the compliance period falls short of what is reasonable.

9. Drawing these strands together I find that whilst the appellant has provided evidence and argument to support most of his grounds of appeal, there was no prospect of the appeal under ground (d) succeeding in the absence of any evidence. I conclude that the appellant has acted unreasonably but it does not necessarily follow that this has resulted in the Council incurring unnecessary or wasted expense in the appeal process.

10. The Council provides evidence in the form of photographs taken in November and December 2015, a Google Street View image and Council Tax details from the Valuation Office website in relation to the appeal under ground (d). The photographs appear to be from the Council's own records and the image is easily downloadable from the Google Maps website, therefore, the Council was not put to any expense in obtaining them. The Council refers to the Council Tax records in its evidence for the ground (b) appeal. Consequently, it would have obtained this information even if the ground (d) appeal had not been submitted.

11. For these reasons I conclude that the Council has not incurred unnecessary or wasted expense in the appeal process.

Conclusion on Costs Application

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

Sarah Dyer

Inspector