
Costs Decision

Site visit made on 25 May 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Costs application in relation to Appeal Ref: APP/Q5300/X/20/3262801 209 Fox Lane, Southgate N13 4BB

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Achilleas Zikos c/o Prime Locations for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of a certificate of lawful use or development for: Use of property as 3 self-contained flats, Ground Floor Flat 1, First Floor Flat 2 and Top Floor Flat 3.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG)¹ 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 PPG states² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning³ applications, or by unreasonably defending appeals.
4. The PPG also states⁴ that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
5. When considering the LDC application, the Council found Council Tax records contradicted the applicant's version of events. Whilst I have not found in favour of the Council in my appeal decision (for reason explained therein), in light of this contradictory information the Council was entitled to reach the decision it did. So its decision to refuse the LDC application for this reason was not unreasonable.

¹ Appeals, Paragraph: 030 Reference ID: 16-030-20140306

² Appeals, Paragraph: 049 Reference ID: 16-049-20140306

³ Whilst the PPG uses the phrase 'planning applications' it is equally applicable to LDC applications

⁴ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

6. However, the Council's decision notice refers to a 'rule' on 'one opportunity to obtain planning permission after the event', from the PPG⁵. But the application which was before me in the appeal was a lawful development certificate (LDC). It was not an application for planning permission and so no such 'rule' applied for the LDC application and this 'rule' has no bearing over whether the appeal development is lawful or not for the purposes of section 191 of the 1990 Act. As such, in this regard, the Council misapplied the PPG when deciding the LDC application.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. 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 Enfield shall pay to Mr Achilleas Zikos, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the element of the reason for refusal relating to the 'rule' on 'one opportunity to obtain planning permission after the event'; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council of the London Borough of Enfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Perkins

INSPECTOR

⁵ Enforcement and post-permission matters, Paragraph: 013 Reference ID: 17b-013-20140306