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## Costs Decision

Site visit made on 15 June 2021

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2021**

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### **Costs application in relation to Appeal Ref: APP/U5930/C/20/3258651 Land at 48 Hoe Street, Walthamstow, London E17 4PG**

- 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 Mountgrove Properties (No.2) Limited for a full award of costs against the Council of the London Borough of Waltham Forest.
  - The appeal was against an enforcement notice alleging failure to comply with conditions Nos. 2 and 3 imposed on a planning permission ref 163726 granted on 7 August 2017.
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### **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.

### **Reasons**

3. The applicants consider that the Council should have granted their planning application to regularise the changes which they had made to the consented scheme after the development had been constructed (Council Ref. 183146). They also argue that the Council has not provided justification for its change of stance on the use of a different facing brick to that approved as part of planning permission ref 163726.
4. The Guidance sets out that a substantive award of costs against a local planning authority may arise if it prevents or delays development which should clearly be permitted having regard to its accordance with the development plan, national policy, and material considerations. In this case it will be seen from my decision that I agree with the Council in its view that the development which has been carried out should not be permitted. On that basis the Council has not prevented development which should have been permitted.
5. The applicants provided email exchanges between themselves and Council officers between 2017 and 2020 as part of their appeal submissions and I have referred to them in dealing with this application for costs.
6. In September 2018 the Council contacted the applicants and as part of its letter advised that a retrospective planning application or Non Material

Amendment application would not be considered favourably. As I have referred to above the application which was submitted was refused. In terms of delays the applicants do not appear to have exercised their right of appeal in respect of the Council's refusal to grant permission for the scheme as constructed. They could have proceeded to do so from 5 December 2018, and it was their choice to continue negotiations with the Council.

7. The Council accepts that enforcement investigations lay dormant for a year. This resulted in a delay in the issue of the enforcement notice. Nevertheless, this does not overcome the fact that the appellants had professional advisors and were aware during that time that they did not have planning permission for the building as it had been constructed.
8. In respect of the change to the facing brick, in September 2017 the applicants requested confirmation of the use of an alternative facing brick and were advised by a Council officer of the need for an application for a non-material amendment to be made. Following further exchange by email the Council officer confirmed that the alternative brick was supported by the area manager, the design manager and himself. However, he said again that the variation of materials would have to be formally approved.
9. In their comments in response to the Council's statement the appellants acknowledge that following the informal advice from officers, they should have immediately followed on with the submission of an application to vary Condition 3 to formally regularise this brick change.
10. There was no requirement on the Council to explain its change of view regarding the acceptability of the alternative facing brick expressed on 27 September 2017 and its refusal of the variation of condition 3 to allow its use on 5 December 2018.

### **Conclusion**

11. For the reasons set out above I do not find that the Council has acted unreasonably. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

*Sarah Dyer*

Inspector