



Costs Decision

Site visit made on 12 October 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Costs application in relation to Appeal Ref: APP/B4215/C/20/3246730 499A and 501 Burnage Lane, Manchester M19 1WL

- 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 Manchester City Council for a partial award of costs against Mr Zaid El-Wadi.
 - The appeal was against an enforcement notice alleging the subdivision and conversion of the dwellinghouse at 501 Burnage Lane to form two self-contained flats, the erection of a single storey front extension at 501 Burnage Lane and the erection of a part single/part two storey dwellinghouse to the side of 501 Burnage Lane to form 499A Burnage Lane.
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Decision

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

Reasons

2. The Planning Practice Guidance (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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Unreasonable behaviour may be either procedural – relating to the appeal process, or substantive – relating to particular issues arising from the merits of the appeal. The PPG goes on to state that the right of appeal should be exercised in a reasonable manner and an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding.
3. This is an application for partial costs with respect to the time and resources spent on the appeal under ground (d). When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
4. The appeal on ground (d) only relates to the subdivision and conversion of the dwellinghouse at 501 Burnage Lane to form two self-contained flats. Under s171B (2) of the Act, no enforcement action may be taken at the end of the

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

period of four years beginning with the date of a breach of planning control consisting of a material change of use of a building to use as a single dwellinghouse. The enforcement notice was dated 16 January 2020 and therefore the material date for the use of the property will be 16 January 2016.

5. The Council contends that the appellant has behaved unreasonably in that he has submitted information in support of his appeal that is manifestly inaccurate and/or untrue. The appellant originally requested that the appeal should be dealt with as an Inquiry but was started as a written representations case after having been reviewed by an Inspector. The procedure then changed again after the Council had decided to pursue a case of deliberate concealment, meaning that evidence should be tested under oath.
6. However, following the submission of further evidence by the Council the concealment argument was dropped as the Council believed there was clear and substantial evidence to show, on the balance of probabilities, that the breach of planning control had occurred after the material date and could not be immune from enforcement action. As a consequence of the additional evidence, the Council dropped its argument of deliberate concealment and therefore the procedure was changed to deal with the appeal through written representations.
7. It is not unusual for the procedure to change during the course of appeal proceedings. In this case, it seems to me that ultimately the most suitable procedure has been followed. It is unfortunate that there has been some uncertainty about the most suitable procedure but that, in my judgement does not point to unreasonable behaviour on the part of the appellant or, indeed, the Council.
8. The Council considers its evidence to be clear and substantial that the appellant's version of events is less than probable. Indeed, in my main decision I have concluded against the appellant on ground (d) in the light of the Council's. However, that is a matter of judgement and is based on the evidence submitted by both parties. The burden of proof is on the appellant and the standard of proof is the balance of probabilities.
9. The appellant has not provided a detailed response with respect to the Council's contradictory evidence relating to the NatWest mortgage and I am not clear why he ultimately agreed for the appeal to be determined under written representations. However, I have weighed up the evidence before me and have come to the conclusion that on the balance of probabilities the appellant's version of events is less than probable.
10. I can understand that the Council has spent considerable time and resources in defending the appeal on ground (d) but I do not agree that the appellant has pursued a hopeless case or that he has deliberately provided evidence that is shown to be manifestly untrue or inaccurate. Consequently, although I have concluded against the appellant on ground (d), I do not find that he has behaved unreasonably.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

A A Phillips INSPECTOR