
Costs Decisions

Site visit made on 30 November 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Costs application in relation to Appeal A: APP/R5510/C/21/3267601 Land at Summerfield Bungalow, Springwell Lane, Rickmansworth WD3 8UX

- 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 Mr Andrew Travers for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against an enforcement notice alleging the material change of use a building to a self-contained residential unit.
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Costs application in relation to Appeal B: APP/R5510/C/21/3267589 Land at Summerfield Bungalow, Springwell Lane, Rickmansworth WD3 8UX

- 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 Mr Andrew Travers for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against an enforcement notice alleging the material change of use a building to a self-contained residential unit.
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Decisions

Appeal A: APP/R5510/C/21/3267601

1. The application for costs is refused.

Appeal B: APP/R5510/C/21/3267589

2. The application for costs is refused.

Reasons

3. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. These costs applications relate to two appeal decisions that I have covered in one decision letter. I have taken the same approach of writing one costs applications decision letter. However, like with my consideration of the appeals, I have where necessary split out the arguments made under each separate application.

Appeal A

5. I note that the Council issued the Enforcement Notice (EN) before issuing its decision on a Prior Approval (PA) application (under the Town and Country Planning (General Permitted Development) Order 2015) (GPDO) for the change of use of Building A from an office to a dwellinghouse. However, whether the Council issued its PA decision within the required 56 days or not, it did give a reason why the application should be refused related to the building not being in office use on the material date, that being 29 May 2013. I have agreed with the Council on this issue in my appeal decision. As such, the PA application was not a reason to hold off taking enforcement action.
6. Furthermore, an earlier dismissed appeal against an application for a Lawful Development Certificate (LDC) for the existing residential use of the building meant that there was a breach of planning control which the Council had a public duty to take enforcement action against, albeit discretionary, if it was considered expedient to do so. The Council could have invited the appellant to submit a retrospective application to seek to regularise the breach of planning control, but the Council clearly had concerns that the residential use of the building was causing unacceptable harm because it conflicted with national and local policies related to protecting the Green Belt (GB) in particular. It was, therefore, not appropriate to invite such an application.
7. Moreover, an application to retain the residential use of the building has already been refused in 2017. Whilst the first reason for refusal of that application related to flood risk may no longer apply, other reasons for refusal to do with the site being in the GB and the lack of evidence around continued office use mirror the concerns raised by the Council in the reasons for issuing the EN. The development plan position may have changed between 2017 and now, but the position of the Council and the purposes of the old and new planning policies have not changed. This adds to why I consider it was not necessary or appropriate for the Council to invite a retrospective application.
8. In any event, by issuing the EN, that gave rise to the subsequent appeal in which the merits of a deemed planning application were considered. I have refused that application and agreed with the Council that the scheme harms the GB. Against this background, it would have been meritless to invite a planning application from the appellant. It would only have delayed the inevitable taking of formal enforcement action.
9. As for how the Council investigated the breach of planning control, I note that the appellant apparently never received a reply to a request for a site meeting in February 2019. However, whether that was the case or not, the unauthorised occupation of Building A has been ongoing for several years. I note that there were several Council officer visits to the site before the 2017 planning application was refused. And since then, there has been a continuing enforcement history, including earlier ENs directed at seeking to cease the residential use of the building. It seems to me, therefore, that the Council was aware of the site circumstances and it did not need to undertake a visit to specifically investigate the breach of planning control that it had known about for several years.
10. I do not have a copy of an officer delegated report or Planning Committee report to show that the Council considered the personal circumstances of the occupiers of the building and any human rights implications before deciding to

take enforcement action. Nevertheless, that is evidence I have considered when reaching my decision on the EN appeal and found that in the overall balance it was not enough to cause the appeal to be allowed and thus grant planning permission on the application deemed to have been made.

11. Regarding the issue of providing a suitable area of private outdoor amenity space to go with Building A, which was one of three substantive reasons given for issuing the EN, I accept to a limited extent that the Council could perhaps have had greater regard to the size of the land owned by the appellant and then determined that the domestic space needed could have been provided within that. Nevertheless, without such a space being clearly delineated, there was a conflict with policy DMHB18 from the Hillingdon Local Plan: Part 2 – Development Management Policies (2020) and, as part of considering the living conditions of the occupiers of the dwelling, it was a legitimate concern. Furthermore, along with the other reasons for issuing the EN there was clearly going to be an appeal. Therefore, even if the concern about the lack of outdoor private space had not been a reason for issuing the EN, this would not have avoided the appeal altogether.
12. Taken in the overall round, whilst the appellant is obviously concerned about the Council's action and the consequences of the enforcement process on his family, I do not agree that the Council acted disproportionately. Effective enforcement is important to maintain public confidence in the planning system and in the case of Appeal A, I have upheld the EN that seeks to end a breach of planning control that conflicts with the development plan. Therefore, whether I look at the Council's own guidance on taking enforcement action or nationally, the Council did not behave unreasonably.

Appeal B

13. Notwithstanding the dispute between the Council over when the kitchen facilities were removed and when the Council was told about that, there is a history of self-contained residential use of building B that conflicted with the development plan, which led the Council to pursue enforcement action. It is on this basis that, despite the kitchen removal, the appeal under s174(2)(b) of the 1990 Act failed. Furthermore, it is the case that other works that facilitated the use, namely the bathroom, is still in place and as such the breach of planning control is not yet remedied. That is why I have left step (iii) in the EN. Also, whilst I have not seen evidence to suggest that the appellant would reinstate a kitchen and restart the self-contained residential use, the wording to s174(2)(b) of the 1990 Act aims to prevent ENs being quashed just because the uses or operations were not occurring on the date that the EN was issued. It was a legitimate course of action for the Council to issue the EN.
14. I have explained in my appeal decision why I have considered the deemed planning application as a self-contained residential use and not an annex. Any future proposed annex use is a matter separate to the appeal. I therefore cannot see any good reason why the Council should have invited the appellant to apply for a residential annex. Any other matters related to a site visit by Council officers, and what did or did not happen on that occasion, is also outside of the appeal process.
15. The Council did not behave unreasonably in Appeal B.

Conclusion – both appeals

16. The Council did not behave unreasonably in either appeal. As such, awards of costs are not justified and both applications should be refused.

Gareth Symons

INSPECTOR