

Costs Decision

Inquiry Held on 21, 22 July and 5 November 2021

Site visit made on 23 July 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17/12/2021

Costs application in relation to Appeal Ref: APP/U5930/C/19/3225886 Land at Fairways, Southend Road, London E4 8TA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by H Y Investments Limited for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of a building and land to restaurant with ancillary and incidental operational development.
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Decision

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

The submissions for H Y Investments Limited

2. An application for a full award of costs is made on the basis that the notice fails to identify the precise boundaries of the land to which it relates, and the Council failed to serve notice on someone with a material interest in the land. The notice is therefore a nullity or, if not, that it is invalid and incapable of remedy under s176(1) or on the basis of the ground (e) appeal.

The response by London Borough of Waltham Forest

3. Had the arguments relating to nullity or invalidity incapable of correction had merit, a 3 day Inquiry would not have been necessary. In respect of the claimed failure to serve notice, in the Council's opinion, the party identified by the appellant does not have a material interest in the land affected by the notice.

Reasons

4. 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. The PPG provides a list of what actions may lead to an award of costs against the Council. The actions identified by the appellant do not appear on the list provided in the PPG, the list is not however exhaustive.
5. I have found that the notice is not a nullity, nor is it invalid and incapable of remedy. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Madge
INSPECTOR