
Costs Decision

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2022

Costs application in relation to Appeal Ref: APP/N5090/C/20/3259541 Land at 58 Sturges Avenue, London NW4 3TS

- 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 Namir Moslawy for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging without planning permission the change of use of land in the rear garden to use for/as two dwellinghouses and operational development in the form of construction of a building in which these dwellings are situated carried out incidental to making the change of use.
 - Applications for costs were also made on similar grounds by the two additional appellants against the notice. These applications are the subject of separate Decisions. The Costs Decisions should be read alongside the Decisions on the appeals.
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DECISION

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

REASONS

2. The Planning Practice 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.
3. The application is primarily directed towards procedural matters, (i) the process before the notice was issued, and (ii) the failure of the Council to review its case at various stages in the appeal process.
4. I declined to consider in any detail the applicant's validity case based on 'essentially administrative actions'. Having regard to case law, the particular matter pursued does not fall readily within the scope of the grounds of appeal in the 1990 Act and does not go to the wording of the notice.
5. The alleged breach of planning control in the notice issued on 5 August 2020 (the current notice) is not described in same terms as the enforcement notice upheld on appeal and is able to be distinguished. The current notice was issued before an application was made for a lawful development certificate (LDC) for use of the building as two self-contained flats. The Council considered whether or not to withdraw the current notice after the completion of the litigation on the appeal decision on the LDC. The Council explained adequately why the current notice was not withdrawn and presented a reasoned case throughout. Even though I decided to allow the appeal, an award of costs does not necessarily follow the outcome.

6. As to other matters raised, the possibility of a future re-issue of the enforcement notice in this instance has no weight in considering whether unreasonable behaviour occurred. The Council addressed matters to do with the actual service of the notice in its statement (submitted in accordance with the timetable set out in the start letter), consistent with a ground (e) appeal. The 'Miller Mead nullity case' was not relied on by the applicant. I disagreed with the case presented by the two other appellants on this point.

Conclusion

7. I find that unreasonable behaviour, resulting unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated.

Diane Lewis

Inspector