The Planning Inspectorate

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/20/3259548
Land at 58 Sturgess 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 Steven Thomas 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.

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 new point taken in this application is that the Council deliberately concealed the protected characteristics of the applicant and of the occupier of the next door unit. This point in turn is linked to the expediency of issuing the notice.

4. If the applicant wished such information to be taken into account in the determination of the appeal it should have been provided in his own grounds of appeal, especially in view of the likely sensitivity of the information and regulations on data protection. Very brief reference to the matter is made in the grounds of appeal and statement of case. The expediency of issuing the notice is a separate, distinct matter and, with reference to the *Britannia Assets* judgement, is not within my jurisdiction.

5. As a preliminary matter in the appeal, the applicant submitted that the enforcement notice was a nullity because it was Miller Mead void for uncertainty. In the decision on the appeal I concluded the notice satisfied the Miller Mead test, complied with all relevant statutory requirements and was not a nullity.

6. The application for costs also relies on a validity case regarding authorisation to issue the notice. This matter was not presented explicitly as part of the

applicant's grounds of appeal or statement of case and it was not a reason for allowing the appeal.

7. As to the substance of the matter under appeal, the description of the alleged breach of planning control is able to be distinguished from the description of development in the notice upheld on appeal in May 2020. The enforcement notice, now under appeal, 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 presented a reasoned case throughout and explained adequately why the notice was not withdrawn after the Court ruling in July 2021 upholding the appeal decision granting a LDC. Even though I decided to allow the appeal, an award of costs does not necessarily follow the outcome.

Conclusion

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

Diane Lewis

Inspector