



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/20/3259543 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 Moving Homes Limited 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. 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 my decision I concluded the notice satisfied the Miller Mead test, complied with all relevant statutory requirements and was not a nullity.
4. 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 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 The Council presented a reasoned case throughout and explained adequately why the notice was not withdrawn after the Court ruling in July 2021 upholding the appeal decision granting a LDC.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.
5. The application for costs also relies on a validity case regarding authorisation to issue the notice. This matter was not presented as part of the applicant's grounds of appeal or statement of case and it was not the reason for allowing the appeal.

Conclusion

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

Diane Lewis

Inspector