



Costs Decisions

Site visits made on 7 June 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Costs application in relation to:

Appeal A Ref: APP/ A5270/C/19/3230634

58 Western Avenue, Acton, LONDON, W3 7TY and

Appeal B Ref: APP/A5270/C/19/3230643

60 Western Avenue, Acton, LONDON, W3 7TY

- The applications are 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 applications are made by Mr Anton Marmot for a full award of costs against the Council of the London Borough of Ealing and by the said Council for a partial award of costs against Mr Anton Marmot.
 - The appeals were against enforcement notices alleging without planning permission the material change of use of the properties to 11 self-contained residential units.
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Decisions

1. The appellant's costs applications fail, and the Council's costs applications fail.

Background

2. Both parties have made costs claims in relation to Appeals A and B. Given the similarities between the issues, I shall deal with them together.
3. 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.

Reasons

Council's Costs Claim

4. The basis of the Council's cost claim is that the appeal under ground (a) has no prospect of success. This relates to the issues arising from the merits of the appeal and is therefore substantive in nature.
5. The PPG sets out that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
6. The Council advised the appellant's solicitor on 24 June 2019 that it considered there would be no reasonable prospect of an appeal for the retention of 11 flats in each property being allowed and as such, this would be grounds for an

award of costs in the event of an appeal. The Council state that no planning policy arguments were advanced to support the continued use of each appeal site as 11 self-contained flats and the appellant instead focussed on powers to grant planning permission for an alternate scheme where a ground (a) and (f) appeal had been made.

7. Whether an alternative scheme forms part of the matters stated in the notice as constituting the breach of planning control is a matter of planning judgement. While I have found that planning permission 201195FUL does not form part of the matters, I do not consider pursuing the ground (a) was unreasonable on this basis. Furthermore, the appellant has provided a series of documents seeking to demonstrate the adequacy of the accommodation, for example, documentation from current occupants of the appeal buildings, photographs and HMO licences and has drawn my attention to the availability of public open space in the area.
8. Whilst I have found the appellant's arguments in this regard do not outweigh the conflict with policy and the harm to living conditions, the appellant has provided evidence in support of the material considerations they are seeking to advance. The appellant has also sought to demonstrate the varied character of the area using photographic evidence. Indeed, as will be seen from my appeal decision, I have agreed with the appellant that there is no harm to the character and appearance of the area.
9. Thus, for the reasons given above, I do not believe the appellant was unreasonable in pursuing the appeals under ground (a).

Appellant's Costs Claim

10. The PPG advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
11. The main thrust of the appellant's case is that had the Council given them sufficient opportunity, they would have sought to resolve the breach of planning without the need for the Council to issue enforcement notices. I have been provided with witness statements from the appellant, the Director of MultiCreation Architectural and Planning Services, and the Director of Mialex in this regard.
12. The National Planning Policy Framework (the Framework)(2021) states that local planning authorities should act proportionately in responding to suspected breaches of planning control. The PPG also advises that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy.
13. The appellant has drawn my attention to Ealing Council Corporate Enforcement Policy which I am advised states 'It will generally be unreasonable for the authority to issue an enforcement notice solely in the absence of a valid planning permission.' and 'If a breach of planning control has occurred the person responsible will be advised: of the steps required to remedy or regularise the situation; where possible, of the prospects of a planning application being approved including the likelihood of any restrictions or

conditions (if it is clear that planning permission is unlikely to be forthcoming for an unauthorised development or use, the person responsible will be advised accordingly at this stage.'

14. However, while it is good practice for local planning authorities to avoid taking formal enforcement action in certain circumstances, such as where there is a trivial or technical breach of control which causes no material harm, this is not a statutory requirement.
15. Section 172(1) of the Act sets out that the local planning authority may issue a notice where it appears to them (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
16. Whether to issue an enforcement notice is therefore a matter for the local planning authority's discretion. There is no jurisdiction for me to determine whether or not the local planning authority has complied with its obligation under section 172 in this regard and any legal implications of whether it was expedient for the Council to issue an enforcement notice would need to be dealt with by way of judicial review.
17. Although the appeals were initially identified as appeals which could be referred to mediation, the Council has explained it considers mediation is not appropriate in this case. Since mediation is entirely voluntary and given the matters in dispute, I cannot agree the Council's decision not to engage in mediation constitutes unreasonable behaviour.
18. As will be seen from the appeal decision, I have upheld the enforcement notice and refused the application deemed to have been made under section 177(5) of the Act. It follows that the appeal could not have been avoided by more diligent investigation. While I have corrected the notice, the correction was a minor typo and whilst I have varied the notice, this relates to the appeal made under ground (g), which is a matter of judgement. I cannot therefore agree that the Council has been unreasonable in this case.

Overall Conclusion

19. I therefore find that unreasonable behaviour by the appellant and the Council, resulting in unnecessary and wasted expense, as described the Planning Practice Guidance, has not been demonstrated.

M Savage

INSPECTOR