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## Costs Decision

Site visit made on 6 July 2022

By Eileen Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 3<sup>rd</sup> August 2022

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### **Costs application in relation to Appeal Ref: APP/P4605/C/22/3293166 Baldwins House, 290-298 Baldwins Lane, Birmingham B28 0XB**

- The applications 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 A Khan for a partial award of costs against Birmingham City Council
  - The appeal related to an enforcement notice in respect of a change of use to self-contained flats
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### **Decision**

1. The application for a partial award of costs by Mr A Khan against the Council is refused.

### **Reasons**

2. 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.
3. The allegation refers to the unauthorised change of use of 2 self-contained flats. The applicant's claim is that as a result of a combination of the wording used by the Council in the notice and an error in the enforcement plan, the applicant interpreted the notice as included a third flat to the rear of 296. The applicant considers these matters constitutes unreasonable behaviour which has resulted in wasted expense.

#### *Unreasonable behaviour*

4. The Council in its response refers extensively to the history of the appeal site and points out that the planning application that was submitted prior to the issue of the notice related to the two flats at 290 and 292 only. However, it is still the responsibility of the Council to take care in drafting the notice to ensure that it is accurate. The enforcement plan clearly identified 2 separate areas to the rear, one of which is in the location of the flats at the rear of 290 and 292 and the other area is to the rear of 296.
5. On site, the two blocks which extend out from the main building which were edged in green on the notice plan are clearly separate blocks. The absence of any specific address for the two flats in the allegation has compounded the plan error as has the description of "the Premises" as 290-298 Baldwins Lane which does incorporate 296. A comparison between what was actually occurring in

terms of use on site prior to the issue of the notice and the notice as drafted could have avoided these errors. Therefore, I do find that the Council's behaviour in not correctly drafting the notice and the accompanying plan was unreasonable.

#### *Wasted Expense*

6. The Council considers that even if there is unreasonable behaviour, the applicant has not incurred wasted expense. The applicant has referred to having to prepare a more detailed statement of case and engage an architect to prepare plans for 296 and address the amendments and submit a costs application.
7. However, there are very limited specific references to the flat at 296 in the evidence. Apart from the request to consider converting the flats at 290 and 292 into one flat, all of the other arguments relied upon relate to 290 and 292 as well as No 296 and would have been advanced whether or not the flat at 296 was included.
8. The applicant did provide a separate plan for 296 as well as a plan for 290 and 292 although there are a number of similarities on the plans. However, there is no requirement to provide plans when determining the DPA under ground (a) as any grant of planning permission under the DPA would have related to the development as existing not by reference to a plan.
9. The applicant has questioned how the fee payable for the DPA was calculated and whether the applicant paid a higher fee due to the inclusion of No 296. Whilst the Council has not commented upon the fee calculation, as the Council is of the view that the notice was only ever intended to relate to two flats that appears unlikely.
10. The applicant has also queried whether the DPA required the payment of a fee at all when there had been a refusal of an application for flat use at 290 and 292 on the 17 December 2021 and the enforcement notice was issued on the 20 January 2022. However, that is an administrative matter for the parties to resolve outside of the costs application as it is a separate issue unrelated to extra expense arising from the errors in the notice relating to No 296.
11. Although the applicant has referred to extra correspondence with regard to the errors and corrections with the notice, the extent and nature of that limited exchange is not dissimilar to exchanges that occur during the course of any appeal.

#### **Conclusion**

12. For all the above reasons, I therefore conclude that although there was unreasonable behaviour, unnecessary or wasted expense as described in the PPG has not been demonstrated. An award of costs is therefore not justified.

*E. Griffin*

INSPECTOR