



Costs Decision

Site visit made on 15 August 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 August 2022

Costs application in relation to Appeal Ref: APP/A5270/C/21/3274804 Land at 297 Greenford Road, GREENFORD, UB6 8RE

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Darwish for a full award of costs against the London Borough of Ealing.
 - The site visit was in connection with an appeal against an enforcement notice alleging the material change of use of dwelling house to a mixed use comprising 3 self-contained residential units and a small HMO, and the construction of a rear roof extension.
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Decisions

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

The case made by Mr Darwish

2. In order to avoid the issue of an enforcement notice the Council asked for an application to be made so that the works that had been carried out on site that were different from those granted planning permission in 2014 were regularised. This was done in 2019 but still has not been determined by the Council, instead they issued the enforcement notice and also demanded a fee of £4000 for the ground (a) appeal which is excessive as the appellant has already paid for the planning application.

The response by the Council

3. In response to a PCN in May 2019 the appellant said the property was in use as a large HMO. This was not lawful and it was suggested an application was made to regularise it. The plans submitted with that application were inaccurate as they showed different dormer configurations. The appellant was asked to rectify the plans but didn't. Following a site visit in September 2019 it was realised that a completely different dormer had been built and the 4 flats with one as an HMO had been created. The Council again asked for a new application to regularise that position. However the appellant was eventually informed it would have to be refused as the dormer was unacceptable.
4. The appellant then suggested various amendments but none were acceptable. The Council suggested the only option was to refuse the application so it could be appealed but the appellant preferred to continue negotiating. In the meantime as immunity for the works was approaching and no acceptable scheme forthcoming the enforcement notice was issued.

5. As to fees, the amount for the ground (a) has been explained in various e-mails. The ground (a) is for the matters alleged, not the scheme submitted as part of the application and they are materially different schemes, hence two fees are required.

Conclusions

6. The Council have provided the e-mails setting out the discussion over fees and that the ground (a) and planning application are materially different and these bear out their description of events above.
7. The Council did suggest refusing the application so that an appeal could be made back in early 2020, but negotiations continued. In January 2021 the appellant agreed that refusing the application would be best, as by then they had been advised the 4 years was approaching and an enforcement notice would need to be issued in any event to prevent the dormer becoming lawful. They would appeal the refusal and also resubmit a proposal acceptable to the Council.
8. What happened to this refusal and appeal I do not know, but whatever the truth of the matter the issue of the enforcement notice was inevitable given the time period. It was up to the appellant whether he pursued the ground (a) or not but as he never wanted the alleged configuration this was probably not his best option but it seems the fee calculation was correct.
9. Given all this it does not seem the Council have acted unreasonably in issuing the enforcement notice or charging a fee for the ground (a) and an award of costs is not justified.

Simon Hand

Inspector