



Costs Decision

Site visit made on 4 October 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH NOVEMBER 2022

Costs application in relation to Appeal Ref: APP/A5270/W/21/3283982 53 and 55 Carlisle Avenue, London W3 7NL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Janjuha for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for "*retrospective planning permission for the retention of (part of) the existing rear ground floor extension, a two storey side extension, a single storey (first floor) rear extension as well as the material change of Nos 53 and 55 Carlisle Avenue from single dwellings (Class C3) to large Houses in Multiple Occupation (Sui Generis)*".
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably so as to cause another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹. Paragraph 031 of the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The application for an award of costs was made in writing, in accordance with the guidance at paragraph 035 of the PPG. The applicant sought a full award of their costs. Although the application does not state as such, my understanding is that an award was sought on both procedural and substantive grounds. The applicant's reasons for doing so can be summarised briefly as follows. The planning application involves a proposal that is materially different to the development attacked by the enforcement notices. The proposal had been prepared to address the Council's objections to the enforcement notice developments. The Council did not make it clear why the application could not be determined on its individual planning merits.
4. At paragraph 047, the PPG stresses that a Council should behave reasonably in relation to procedural matters at the appeal. The non-exhaustive list of examples of where a Council risks an award of costs being made on procedural

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

grounds includes lack of cooperation with the other party and delays in providing information. Paragraph 048 advises that in appeals against non-determination, a Council should explain the reasons for not reaching a decision within the relevant time limit and why permission would not have been granted had the application been determined within the relevant period. A Council is at risk of an award of costs where there are no substantive reasons to justify delaying determination of the application.

5. In terms of the substance of the matters at appeal, the non-exhaustive list of examples of where a Council risks an award of costs being made in paragraph 049 of the PPG include where it has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and not reviewing their case promptly following the lodging of an appeal.
6. The proposal clearly seeks to address the reasons for issuing the enforcement notices. There are substantial differences between this proposal and the development attacked by the notices. Given that the proposal involved a single use and reducing the scale of the large HMOs, together with a reduction in the size of the extensions, it is difficult to see why the Council could not have reached a conclusion on its individual planning merits. However, there was no clear explanation offered by the Council as to why approval would not have been granted, had the application been determined within the relevant period.
7. Neither did the Council offer any clear and convincing explanation as to how the outcome of the enforcement appeals would have made a significant difference in terms of assessing the merits of the proposal. The latest application sought approval for substantial portions of the extensions to the buildings and was not solely for a change of use. Moreover, the outcome of those appeals would not alter the fact that a substantial portion of the built form at the appeal site had previously been given approval by the Council, albeit in association with the use as single dwellings. The Council's approach to dealing with the latest application also does not reflect its position set out in relation to the extensions when determining a previous application for large HMOs at the site², as well as in its defence of the notices at appeal.
8. The Council's actions set out above are therefore suggestive of it having sought to avoid responsibility for deciding the application, rather than determining the application as quickly as possible once it has been validated as might reasonably be expected. The reasons offered do not form a substantive basis for failing to determine the application. It follows that the Council has acted in a manner which is not dissimilar to some of the examples referred to above of unreasonable behaviour in relation to the procedures at the appeal and in relation to the failure to substantiate the non-determination of the application.
9. Nevertheless, for the conditions for an award of costs to be met there must also be clear evidence of the applicant having incurred wasted expenditure in the appeal. As the proposal is largely retrospective, it is hard to see where a delay to determining the application has caused wasted expense. In order to remain, development at the site will have to be reduced in scale to accord with the approved drawings and the attached conditions. Moreover, the Council could reasonably have maintained its previous objections and refused the application accordingly, in which case the applicant would still have been faced

² Council Ref: 181132FUL.

with the prospect of lodging an appeal in order to pursue the proposal in any event. Accordingly, I find little to suggest that the applicant has been put to unnecessary expenditure in making the appeal. It follows that the conditions for an award of costs in the PPG at paragraph 030 have not been met.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR