



Costs Decision

Site visit made on 15 November 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2022

Costs application in relation to Appeal Ref: APP/U5930/C/21/3284495 Land at 31 Belvedere Road, London E10 7NW

- 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 Mr Stephen Willie for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the Land from a class C3 (dwellinghouse) use to a House in Multiple Occupation (HMO).
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

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 and that behaviour has caused 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. The PPG paragraph 031 explains that unreasonable behaviour in the context of an application for costs can be either procedural-relating to the process, or; substantive-relating to the issues arising from the merits of the appeal.
3. The application was made in writing, in accordance with the advice at paragraph 035 of the PPG. Although the application states that a full award is applied for, it is limited to one of the notice requirements and is relevant to the appeal on ground (f) only. Paragraph 032 of the PPG makes it clear that costs unrelated to the appeal are ineligible and awards cannot extend to compensation for indirect losses. Any separate expenses incurred by the applicant as a result of the possession proceedings therefore fall outside the scope of the costs regime. For these reasons, I have dealt with the application on the basis of a partial award of costs being sought.
4. The award is sought on substantive grounds. In terms of the matters relevant to this application, the applicant's case in summary is that by requiring the removal of one of the bathrooms, the notice goes beyond what is necessary to remedy the breach of planning control alleged at the appeal property and is unduly onerous. Prior to the issuing of the notice and subsequently, the

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

Council have failed to explain why that requirement is necessary. Further, by defending the requirement at appeal, the Council have failed to properly consider the applicant's written submissions.

5. The Council's response to the application is in summary that the proliferation of bathrooms at the property facilitated and enabled the unauthorised use. Not removing such facilities could lead to the unauthorised use being revived. The applicant did not identify any action on the Council's part that could be regarded as unreasonable behaviour, instead referring to previous correspondence including outcomes from the Authority's formal complaints process. Neither did the applicant put forward a coherent case in respect of the relevant grounds of appeal.
6. Paragraph 048 of the PPG concerns the handling of an application or an enforcement notice prior to an appeal and is therefore relevant. This advises that a Council must carry out adequate prior investigation before issuing a notice; a Council is at risk of an award of costs if it is 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.
7. At paragraph 049, the PPG advises that a Council risks an award of costs on substantive grounds where an application is unreasonably refused. This could apply equally to a Council deciding that it is expedient to take enforcement action. The non-exhaustive list of examples of where such a situation might arise include failing to produce evidence to substantiate reasons for refusal, making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, acting contrary to, or not following, well-established case law and; not reviewing its case promptly following the lodging of an appeal as part of sensible on-going case management.
8. Proper interrogation by the Council of the planning and building control records might well have led them to establish that the bathroom on the ground floor and the one at loft level had been provided at the property several years ago in conjunction with the lawful use as a dwelling. The apparent overlooking of these records is likely to have led the Council to conclude that at least one additional bathroom had been provided to facilitate the change of use to an HMO. On a reasonable analysis, had the Council reviewed their records more thoroughly there is a distinct likelihood that a requirement to remove one of the bathrooms would not have been included in the notice. This suggests that the Council's investigation prior to the issuing of the notice was unsatisfactory.
9. Following the issue of the notice and throughout the appeal process, the Council has maintained a defence of the requirement to remove one of the bathrooms. This is in the face of evidence regarding the date and circumstances concerning the origin of the two more recent bathrooms at the property. The reasons for the Council maintaining their position were not adequately explained by reference to the relevant evidence. Moreover, in taking this course of action the Council appears to have neglected to consider established case law relevant to the matter at issue which, given that it relates to the same Authority, they should have been aware of. In my view, the above actions fall squarely within the scope of what paragraphs 048 and 049 of the PPG regard as unreasonable behaviour.

10. There is also clear evidence of the applicant having incurred wasted expenditure in the ground (f) appeal. The Council's actions prior to the issuing of the notice meant that once enforcement action was taken, the applicant was compelled to make a ground (f) appeal to protect their position insofar as one of the bathrooms was concerned. Additionally, following receipt of the appeal the Council continued to defend the requirement to remove one of the bathrooms notwithstanding the evidence provided by the applicant. The applicant made further written submissions at the statement and final comments stages of the appeal process to support their case. The Council could have exercised the power in s173A(1)(b) to waive or relax a requirement of an enforcement notice. It is unlikely that a costs award would have been justified had the Council promptly reviewed its case following receipt of the appeal. Ultimately, in the light of the applicant's evidence and the other material considerations I concluded that the notice should be varied to delete the contested requirement.
11. Consequently, the Council has not substantiated its case in respect of the ground (f) appeal. Their actions prior to serving the notice and in respect of this ground of appeal have been similar to the examples of unreasonable behaviour in the PPG referred to above and have meant that the applicant has been put to unnecessary expenditure in pursuing an appeal on ground (f). It follows that the conditions for an award of costs in the PPG at paragraph 030 are met.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, in respect of the ground (f) appeal, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Waltham Forest shall pay to Mr Stephen Willie, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the ground (f) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Waltham Forest, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR