The Planning Inspectorate

Costs Decision

Site visit made on 2 November 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Costs application in relation to Appeal Ref: APP/N5090/C/20/3262530
Land at 53 Ridge Hill, London NW11 8PR

- 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 Adil Malik of Metro Properties (London) Ltd for a full award of costs against the Council of the London Borough of Barnet.
- The appeal was against an enforcement notice alleging: Without planning permission, the use of the building in the rear garden as two self-contained dwellinghouses.

Decision

1. The application for an award of costs 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. Withdrawing an enforcement notice without good reason is unreasonable behaviour. The applicant suggests that this may be the course of action that arises once the Council has sight of the appellant's statement of case and final comments. But the notice has not been withdrawn and nor is there any reason for it to have been.

4. The applicant states that the enforcement notice is a nullity and that the Council failed to correctly serve all occupiers. But, as I have set out in my appeal decision, I have not found either of these to be the case as whether power to issue the enforcement notice existed is a matter for judicial review and service of the notice was effected on Mr Doko by the Council serving the copy on Flat 6 that it addressed to "the occupier". For this reason, I do not see the Council as 'failing to provide relevant information within statutory time limits', for the purposes of the PPG, as is suggested by the applicant.

5. According to the applicant, the Council did not review its case promptly following the lodging of an appeal and has unreasonably defended the appeal. But I do not agree as I have dismissed the appeal and upheld the notice.

6. The applicant states that there was no evidence supplied by the Council to show when the enforcement notice was issued. But the date is clearly stated on the enforcement notice.

7. The applicant further states that there was no evidence that the enforcement notice was served within the time window afforded by section 172(3) of the 1990 Act. But, as set out in my appeal decision, the burden of proof for ground (e) matters such as this falls on the appellant and not the Council and there is no evidence service was not effected within the relevant time period.

8. Further issues are raised by the applicant about the validity of the Council's decision to issue the notice, including issues relating to expediency and planning policies. But these are not relevant to the section 174 grounds of appeal which were pursued in this case.

9. According to the applicant, the planning contravention notice (PCN) that was issued contained no invitation to apply for planning permission. But there is nothing in the wording of section 171C of the 1990 Act to say that it needed to and the service of a PCN is a discretionary procedure in any event.

10. From the information provided, it is clear the PCN was not responded to before the enforcement notice was issued. So in the absence of any evidence to the contrary, I do not accept the applicant's suggestion that the Council (acting as local planning authority) knew Mr Doko lived in the building in the rear garden by the point the enforcement notice was issued.

11. For the purposes of the PPG, the applicant suggests that the Council acted contrary to, or without following, well-established case law. But other than drawing on the aforementioned issue of whether the power to issue the notice existed, this point is not substantiated in the claim.

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

L Perkins

INSPECTOR