



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 the Council of the London Borough of Barnet for a partial award of costs against Mr Adil Malik of Metro Properties (London) Ltd.
 - 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.
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Decision

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

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. The Council seeks a partial award of costs, in relation to the appellant's ground (e) appeal.
3. The Council, in its role as local planning authority, served a planning contravention notice (PCN) which, amongst other things, sought to establish who occupied the building in the rear garden. From the information provided, it is clear that the appellant did not reply to the PCN within the statutory time period and did not reply until after the enforcement notice had been issued and, according to the Council, not until after the enforcement notice had been served.
4. As such, the Council did not serve a personal copy of the enforcement notice on Mr Oltjan Doko, an occupier that it did not know about, within the timeframe set out in section 172 of the 1990 Act. It cannot be the case that the appellant has no responsibility in this, having failed to respond to the PCN by the relevant deadline. In terms of the PPG, on the appellant's side this constitutes a delay in providing information and a failure to adhere to deadlines¹.
5. No good reason has been provided for the timing of the PCN response, even taking into account the appellant being stranded in Morocco. Moreover, there is no evidence the PCN was not properly authorised or that it makes any difference whether it was signed by an officer of the Council or not.

¹ Appeals - Paragraph: 052 Reference ID: 16-052-20140306

6. Crucially, had a timely response to the PCN been provided, in respect of this issue, the ground (e) appeal could have been avoided and the Council could have avoided expending the resources it did in answering this part of the appellant's case against the enforcement notice.
7. Despite repeated assertions by the appellant that the Council knew about the occupier it did not personally serve, no evidence has been provided that this is the case for the Council as local planning authority. So in the context of his appeal on ground (e), it was unreasonable behaviour for the appellant to not provide a timely response to the PCN, notwithstanding that other sanctions apply for non-compliance with a PCN.
8. There is a dispute between the appellant and the Council over whether power to issue the enforcement notice existed and the Council's costs application draws on matters relevant to this. But, as the Council has indicated throughout its submissions, this is a matter for the courts. So there was no need for the Council to expend resources answering this part of the appellant's case against the enforcement notice.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 Mr Adil Malik of Metro Properties (London) Ltd shall pay to the Council of the London Borough of Barnet, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in answering the appellant's case that the Council did not serve a personal copy of the enforcement notice on Mr Oltjan Doko; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr Adil Malik of Metro Properties (London) Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Perkins

INSPECTOR