

Costs Decision

Inquiry Held on 18 to 20 October and 8 November 2022

Site visit made on 20 October 2022

by J Moss BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Costs application in relation to Appeal Ref: APP/U5930/C/21/3275895 Land at the rear of 48-50 Station Road, Chingford, London E4 7BE

- 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 Consortium Properties UK Limited for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land for the maintenance and repair of motor vehicles.
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Decision

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

The submissions

2. The reasons given for the costs application are summarised as follows:
 - (i) The Council failed to meaningfully engage with the applicant prior to the issue of the enforcement notice;
 - (ii) The Council failed to thoroughly investigate matters prior to the issue of the enforcement notice;
 - (iii) The enforcement notice was issued as a result of the threat of a judicial review by a third party; and
 - (iv) There are a number of factual inaccuracies in the Enforcement Notice which would have obviated the requirement for the enforcement notice.

Reasons

3. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. Paragraphs 047 and 049 of the Appeals PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs application include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal;

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- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and
 - a lack of co-operation with the other party or parties.
5. In response to the applicant's costs application, the Council suggest that there have been three years of negotiation with the applicant prior to the issue of the notice. This includes the communications involved around the submission of the application for a lawful development certificate (LDC).
 6. I acknowledge that the Covid 19 pandemic might have hindered any interactions between the two parties. I can also see that the investigation prior to the issue of the notice was focused on a review of the Council's records. Nevertheless, the evidence suggests that the applicant was aware of the Council's investigation and that there had been some contact between the two parties. In particular, the Council's initial appeal statement lists the events, including contact with the applicant, in the years leading up to the issue of the enforcement notice.
 7. All of the above considered, I cannot find unreasonable behaviour on behalf of the Council with regard to its conduct prior to the issue of the enforcement notice.
 8. The applicant suggests that the Council's reasons for the issue of the notice were influenced by the interested parties. They refer to the attempted judicial review in this regard, the evidence of which I have considered. I have no doubt that some interested parties were particularly involved in the Council's investigation. Indeed, I have had regard to the extensive evidence of the Rule 6 party in determining this appeal. However, I have found the Council's evidence to support its issue of the notice to be robust. Its investigation of the breach of planning control has been satisfactory and I have been persuaded by the reasons given for the issue of the enforcement notice.
 9. Whilst I acknowledge that the applicant has been previously told by the Council that enforcement action would not be pursued, the notice subject of the appeal was issued following a review of the Council's position. Section 172(1) of The Town and Country Planning Act 1990 as amended states that a local planning authority may issue a notice where it appears to them that there has been a breach of planning control; and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council is entitled to exercise its powers under these provisions.
 10. Having regard to the above, I do not find unreasonable behaviour on the part of the Council with regard to its investigation of the alleged breach of planning control or the reasons given for the issue of the notice.
 11. I have corrected the enforcement notice so that the breach of planning control described in it refers to the relevant Class of The Town and Country Planning (Use Classes) Order 1987, and so that it is consistent with the description of development that is the subject of the related LDC application. I have also made other corrections to the notice in the interests of precision and clarity. I have made these corrections, concluding that no injustice would be caused in doing so. I have not found the notice to be so imprecise as to make it a nullity. Neither am I of the view that the notice, as drafted, was invalid. For these

reasons, I conclude that the notice does not contain factual inaccuracies, such that its issue demonstrates unreasonable behaviour on behalf of the Council.

12. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR