Costs Decision

Site visit made on 10 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Costs application in relation to Appeal Ref: APP/Z5060/C/21/3272378
73 Lansbury Avenue (Flats 1 and 2), Romford, RM6 6SD

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Gurmuke John Singh for a full award of costs against the London Borough of Barking and Dagenham.
- The application is in connection with an appeal against an enforcement notice alleging the material change of use from a single-family dwelling to self-contained units of accommodation.

Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (PPG)[1] advises that irrespective of the outcome of an appeal, costs may only 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.

3. The application for costs and the arguments advanced for the applicant, and for the Council in response, are as set out in their detailed written submissions. As such, there is no need for me to repeat them here.

4. The appellant seeks an award on procedural grounds on the basis that the Council failed to make reasonable enquiries before making its decision to issue the enforcement notice.

5. In this regard the PPG[2] advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They are 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 avoided the need to serve the notice in the first place.

6. The Council issued the notice following notification of a change in Council Tax banding with effect from 1 November 2019. It is not clear to me from either of the party's submissions what other enquiries were made, and what, if any, information was provided by the appellant to the Council prior to them issuing the notice. An email trail refers to a site visit and a discussion but provides no detail.

[1] Paragraph 030 ref: 16-030-20140306
[2] Paragraph 048 ref: 16-048-20140306

7. Nonetheless, s172(1) of the Act provides that a Council may issue an enforcement 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" (emphasis added)

8. With the above in mind, it seems to me that the change in tax banding and subsequent site visit would, by themselves, have led the Council to reasonably consider ("where it appears to them") that there had been a breach of planning control. Indeed no subsequent appeal by the appellant was made on ground (b) that the change of use had not occurred, or on ground (c) that the use was not a breach of planning control.

9. Furthermore, as already stated, I am unaware of what other detailed evidence of lawful use as flats may have been provided to the Council prior to issuing the notice, but, significantly, no application for a LDC[3] was submitted. Had one been applied for the onus of proof would have been on the appellant. He would have needed to provide the same evidence as he has submitted in the appeal on ground (d) against the notice.

10. In the absence of evidence of such detailed historical information relating to use as two flats being provided to the Council beforehand, it was not unreasonable for them to issue the enforcement notice.

Conclusion

11. For all these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Thomas Shields

INSPECTOR

[3] Certificate of Lawfulness of Existing Use – s.191 Town and Country Planning Act 1990 (as amended)