



Costs Decision

Site visit made on 18 September 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Costs application in relation to Appeal Ref: APP/U5930/C/22/3290382 41 Mornington Road, Leytonstone, London E11 3BE

- 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 Mrs Farhat Naseem Ajaz for a partial award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against an enforcement notice alleging without planning permission, material change of use of the dwellinghouse C3 use class to use as a mixed composite use consisting of a House in Multiple Occupation ('HMO') (C4 Use Class) comprising of 3 bedrooms on the first floor and 3 self-contained flats - 2 on the ground floor and 1 in the loft.
-

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. In essence, the applicant says that the Council behaved unreasonably by:
 - contacting the Valuation Office Agency (VOA) requesting the appeal property be split into self-contained flats for Council Tax banding purposes, in order to set up a "Honey-Trap" for her as regards planning enforcement action; and
 - knowingly stating incorrectly within its appeal submissions that it was the applicant who registered the flats with the VOA as a result of the planning enforcement investigation, in order to paint a certain 'picture' of her in front of the Inspectorate.
4. On 7 May 2021, Mr Nawaz (the agent for the applicant) sent an email to Mr McDermott (Council's Senior Planning Enforcement Officer) attaching a detailed response to a Planning Contravention Notice (PCN) that had been served together with floor plans of the appeal property and other documents. Mr McDermott forwarded that email and attachments to Ms Blake (Inspection & Valuation Officer, Revenue & Benefits Department of the Council) who considered the contents before requesting the VOA to split the property into 5 self-contained flats. The VOA wrote to the applicant on 6 July 2021 stating that the Council had made a request for separate banding and, after making some enquiries directly itself, confirmed in writing on 8 July 2021 that the property would be split into 5 flats as requested by the Council.

5. I see no harm in Mr McDermott sharing information internally within the Council leading to the request being made to the VOA, including floor plans and tenancy agreements that Mr Nawaz had provided to him and which Mr Nawaz was subsequently to provide to the VOA when requested. Notwithstanding the applicant's claim that the Council Tax re-banding constituted a "Honey-Trap", the decisions made by the Council's Revenue and Benefits Department (in making the request) and the VOA (in making the determination) are not for me to comment upon and I read that Mr Nawaz has exercised his right of appeal in that regard through the appropriate forum of the Valuation Tribunal. It is not for the planning appeal costs regime to provide for financial recuperation in order to 'challenge the VOA for the incorrect registrations', as requested by the applicant in her costs claim.
6. Further in that regard, the PPG is clear¹ that the costs regime is only concerned with unnecessary or wasted expense *in the appeal process* (due to unreasonable behaviour by another party). The appeal was not made until 10 January 2022.
7. During the appeal process, Mr McDermott stated in the Council's appeal statement (7 March 2022) that "it is likely that as a result of the planning enforcement investigation, the appellant sought to register the flats with VOA Council tax." However, it was clear in Ms Blake's emailed response to Mr McDermott's contact in May 2021 that she would start the process leading to re-banding/splitting of the property as a direct result of his contact. Accordingly, based on the evidence I have seen, not only is Mr McDermott's assertion in the Council's appeal statement incorrect, but he should reasonably have known it to be incorrect at the time he made it. However, he may not knowingly have made an incorrect statement; he may simply have forgotten the exact details of his communications on the matter with Ms Blake almost a year before.
8. It was unreasonable behaviour for the Council within this context to provide information that is shown to be manifestly inaccurate or untrue, it notably being an example of behaviour in the PPG that could give rise to a procedural costs award². However, it has caused no impact on the success of the appeal (which I have allowed) and no substantive unnecessary or wasted expense in the appeal process. Notwithstanding Subject Access Requests made during the appeal process that may correspond to this matter, it is clear that the applicant already had the evidence to challenge the incorrect assertion when it was made³.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andrew Walker

INSPECTOR

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 047 Reference ID: 16-047-20140306

³ In particular, the email correspondence with the VOA in July 2021 confirming that it was the Council rather than the applicant who had requested the splitting of the property into flats.