



Costs Decision

Site visit made on 17 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Costs application in relation to Appeal Ref: APP/M5450/C/22/3296808 Land at 29 Westleigh Gardens, Edgware HA8 5SQ

- 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 Sunny Popat for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the land from a single family dwellinghouse to use as three self-contained flats.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). 'Unreasonable' has its ordinary meaning, as established by the Courts¹. At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. An award of the applicant's costs is largely sought on procedural grounds, but also touches on substantive matters. In summary, the applicant's claim is as follows. The Council's case at appeal is largely reliant on correspondence taken from a previous enforcement investigation during 2016, in which the applicant stated that they would be making a planning application to use the appeal property as a House in Multiple Occupation (HMO). The Council made no mention however of subsequent correspondence they received as part of the same investigation, in which the applicant stated that a planning application would be made for a change of use to flats. This correspondence clearly showed that the property was in use as flats, not as an HMO. By deliberately not disclosing this information during the appeal, the Council has acted in a manner prejudicial to the applicant's case.
4. At paragraph 047, the PPG confirms that a Council is required to behave reasonably in relation to the procedural matters at an appeal. This paragraph goes on to refer to a (non-exhaustive) list of examples of unreasonable behaviour which may result in an award of costs on procedural grounds being made, including deliberately concealing relevant evidence in an appeal. At paragraph 049, the PPG advises that a Council is at risk of an award of costs if

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

they behave unreasonably with respect to the substance of the matter under appeal. The (non-exhaustive) list of examples of unreasonable behaviour relating to the substance of the appeal include failing to substantiate reasons for refusal or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. Parties to an appeal are entitled to advance what they regard as their strongest case. It is not unusual for parties to focus on and draw attention to what they regard as the best available evidence to support their case. The foregoing is to my mind more likely to reflect the Council's approach to preparing for this appeal, rather than any alternative explanation. Furthermore, the Council were probably well aware that the applicant might utilise correspondence from the 2016 investigation to support their appeal. That being the case, if the Council did consider that such correspondence was relevant, it is hard to see what benefit there would have been to them in not mentioning it. Therefore, there is little which would lead me to believe that the Council purposely withheld information. Besides, the applicant's correspondence in the 2016 investigation is not conclusive of the use of the property, either as flats or as an HMO. Having regard to the other evidence supplied to support the applicant's claim, this correspondence did not have a significant bearing on the outcome of the appeal.
6. Turning to matters relating to the substance of the Council's case. The Council's written submissions contained evidence, including dated photographs, obtained from post-2016 enforcement investigations. Although the 2016 investigation was part of the Council's case, there were wider factors which led them to conclude that the use of the property as three flats was not immune from enforcement action. Some of the material supplied by the Council had limited evidential value, as it was not accompanied by contemporaneous documentation. Even so, the Council's case was carefully and fully explained and involved weighing up the evidence to come to a balanced judgment. Although I reached a different conclusion, based on the totality of the available evidence and on the balance of probability, the Council's case at appeal was therefore substantiated.
7. For the above reasons, I have found little to suggest that the Council acted in a manner similar to the example of unreasonable behaviour in the PPG referred to above relating to the procedures in the appeal, or those examples referred to relating to the substance of the matter at appeal, or otherwise acted unreasonably in relation to the appeal. It follows that the conditions for an award of costs in the PPG at paragraph 030 have not been met.

Conclusion

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

Stephen Hawkins

INSPECTOR