



Costs Decisions

Site visit made on 18 January 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Costs Application (A) in relation to Appeal Ref:

APP/D1780/C/23/3313994

Land at 79 Westridge Road, Southampton SO17 2HN

- 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 H Singh of Denzil Properties (Singh and Kaur) Limited for a full award of costs against Southampton City Council.
 - The appeal was against an enforcement notice alleging the material change of use of the Land to four self-contained flats.
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Costs Application (B)

- The application is made by Southampton City Council for a full award of costs against Mr H Singh of Denzil Properties (Singh and Kaur) Limited.
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Decisions

Applications A and B

1. The applications for an award of costs are refused.

Reasons

2. The Planning Practice Guidance 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. The thrust of the appellant's case is that the notice referred to the creation of 4 flats, when in fact there are 5 flats. The Council were made aware of this when the appeal was lodged and were invited to withdraw the notice. They chose to not do so, instead accepting that if there was evidence of 5 flats, the ground (b) appeal may succeed and the notice quashed.
4. The Council were made aware of the guidance pertaining to an award of costs and Government guidance is clear about the importance of obtaining information about an alleged breach of planning control to ensure that enforcement action is effective. There was no internal inspection of the building nor planning contravention notice (PCN) issued.
5. The notice cannot be corrected without prejudice to the appellant and as such the appeal under ground (b) should be allowed and the notice quashed. If this happens, the Council is clearly at fault and will have exhibited unreasonable behaviour in failing to adequately investigate. This is especially the case as the Council was made aware of the error and implications that could arise.

6. Therefore, the appellant has incurred unnecessary time and expense in pursuing the appeal.
7. The thrust of the Council's case is that the appellant withdrew the ground (d) appeal at a late stage of the appeal process, upon the submission of statements of case. This resulted in unnecessary work on the part of the Council and therefore wasted expense. The appellant had a lengthy period to gather evidence. Furthermore, the appellant's grounds of appeal were vague and imprecise which gave the Council and interested parties little opportunity to properly respond to them.
8. The Council also notes the appellant greatly decries that the notice alleges there are 4 flats, however the evidence pertaining to 5 flats is extremely weak, with no utility bills or tenancy agreements as the Council would expect. The first time the appellant discussed the breach with the Council was upon lodging the appeal, and the Council would have been remiss to withdraw the notice. No evidence of there being 5 flats was presented to the Council.
9. As such, the Council considers the appellant has behaved unreasonably by not providing evidence in advance of the appeal being lodged or earlier during the appeal process. The Council therefore considers its costs in defending the appeal should be reimbursed, on the basis that the failure of the appellant to provide timely evidence could have resulted in a lengthy and abortive process.
10. The evidence then before me is that a complaint regarding a breach of planning control at the site was first brought to the Council's attention in November 2020. Following two visits to the site, the Council endeavoured to correspond with the owners/appellant but to little avail. This resulted in the notice being issued in November 2022.
11. From its investigation the Council seemingly concluded there were only 4 flats, even though there was conflicting evidence. There was not a full internal inspection undertaken nor PCN issued. However, for the purposes of issuing a notice, it only has to appear to the Council that there has been a breach of planning control. Whilst the Council perhaps should have undertaken a more adequate investigation to ensure effective enforcement action, the appellant perhaps should have been more forthcoming in order to resolve the situation. I am also mindful that in any event the onus remains firmly on an appellant to regularise matters and/or demonstrate their case.
12. It was therefore inevitable in these circumstances that a notice would be issued, following which it was asserted there were 5 flats, albeit little evidence to substantiate this was initially provided to the Council. I then accepted that the evidence subsequently placed before me demonstrated on the balance of probabilities that there were 5 flats for the purposes of a ground (b) appeal, even though the Council still considered further evidence was required.
13. It therefore took an appeal to provide resolution in respect of the number of flats and I find that both parties were equally responsible for this. The behaviour of both parties was however not unreasonable, but this is very finely balanced, and there could have been more cooperation and/or diligence exercised. That all being so, an award of costs has not been demonstrated.
14. I then do not find the appellant's grounds of appeal to have been vague or imprecise. It was couched in appropriate terms. Whilst the ground (d) appeal

was subsequently withdrawn, the Council's response to this amounted to one paragraph and therefore I am not persuaded there was any tangible wasted expense.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR