



Costs Decision

Site visit made on 20 November 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Costs application in relation to Appeal Ref: APP/Z5060/C/23/3326547 Land and premises at 204 Longbridge Road, Barking IG11 8SY

- 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 Iqbal Alam for a full award of costs against the Council of the London Borough of Barking and Dagenham.
 - The appeal was against an enforcement notice alleging: the unauthorised subdivision of the property, to create self-contained unit of accommodation.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (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. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs application include:
 - delay in providing information or other failure to adhere to deadlines; and
 - failure to produce evidence to substantiate each reason for refusal on appeal.
4. I have set out in my appeal decision that I am unable to assess the background to the issue of the notice, which includes whether or not the necessary authority was in place to issue the enforcement notice subject of the appeal. This must be pursued through the courts, where matters such as the resultant costs of the applicant might be considered, if a procedural error were to be found.
5. Contrary to the applicant's claims, the records show that the Council submitted the appeal questionnaire on time, on 5 October 2023.
6. I can see that the Council asked for an extension to the deadline to submit representations at the 6 week stage of the appeal, which was 2 November 2023. This request was, however, made on 8 November 2023, and was refused, not least because the Council would have already had sight of the representations made at the 6 week stage by the applicant and interested parties.

7. Nevertheless, the enforcement notice itself sets out the reasons for its issue and includes a brief explanation of the harm that is alleged to have been caused by the development that is the subject of the notice. The Council's final comments appear to reiterate its objections to the development, but these are made in a single bullet point. The comments made in the other bullet point respond to the applicant's case regarding the issue of the notice.
8. The notice refers to the detriment caused by the loss of a family home. The Council has not, however, expanded upon this by demonstrating, for example, that the demand for such homes in the area far outweighs the supply. There is also reference to noise and disturbance. However, the Council's evidence does not give any indication of the type of noise or the level of activity generated by the development, in comparison with what might be the case with the lawful use of the site. Such analysis is essential in demonstrating that harm is caused. Furthermore, the Council does not indicate who has been affected, or most affected, by the development. Importantly, none of the Council's evidence responds to the grounds (d), (f) and (g) appeal.
9. I can see that the Council's request for extra time to submit its representations at the 6 week stage of the appeal (2 November 2023) resulted from the absence of the officer dealing with the appeals, due to ill health. The request was, however, made 6 days after the 2 November 2023. Whilst the officer may not have been working at the time the appeal timetable was set, this was some 6 weeks before the main appeal statements were due to be submitted. The Council has not given any reason why its request was so late in the proceedings. Nor has it explained why the representations could not have been prepared on time by another officer. The Council also give no reason why there is no response to the grounds (d), (f) and (g) appeal.
10. The Council has made little effort in defending its position in this case. It is not a defence to suggest that there has not been wasted expense on the part of the appellant as a result of this, following the missed deadline. Had the applicant known the extent of the Council's response to the grounds of appeal, he may not have prepared his case as comprehensively as he did.
11. The PPG states the aims of the costs regime, which includes to:
 - encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case; and
 - encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.

I cannot find the Council to have acted in accordance with these aims.

12. I have stated above two of the examples given in the PPG of unreasonable behaviour that might lead to an award of costs against the Council. In view of my findings above, I can only conclude that the Council has demonstrated this type of unreasonable behaviour. This has resulted in unnecessary or wasted expense during the appeal process. Accordingly, an award for costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Barking and Dagenham shall pay to Mr Iqbal Alam, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Barking and Dagenham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR