



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/23/3326546 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: Without planning permission, the unauthorised change of use to an Estate Agency business (E(g)(i)).
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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. The Council have, however, made representations at the final comments stage, but these are very briefly stated.
7. There is clearly agreement between the parties that the development subject of the enforcement notice appeal is the same as that subject of the linked certificate of lawful use or development (LDC) appeal (appeal reference APP/Z5060/X/22/3311100). In that case the Council relied upon the officer's report prepared in respect of the LDC application; this report is wholly relevant to ground (d) in the enforcement notice appeal. In that report, rather than to have brought into question the applicant's evidence, the Council point to evidence of its own that it says contradicts the applicant's version of events.
 8. Notwithstanding the above, the lack of any further interrogation of the applicant's evidence on the part of the Council at appeal stage has made it easier for me to find that the applicant has discharged the burden of proof in these appeals. In addition to this, the Council's contradictory evidence is limited. Nevertheless, reliance on the LDC report for the ground (d) appeal is reasonable. For this reason, I am satisfied that the Council has made a reasonable attempt at a case on ground (d). I cannot, therefore, regard it as having acted unreasonably by not presenting any evidence at the 6 week stage in response to the ground (d) appeal.
 9. Turning to the Council's case for the remaining grounds of appeal, 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 also reiterate its objections. However, this is also brief and refers to the use of the property as a HMO, rather than to the use that is alleged in the notice.
 10. The notice and the final comments refer to noise and disturbance, but 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.
 11. In addition to the above, the Council has provided no response to the ground (f) and (g) appeal.
 12. I can see that the Council asked for extra time to submit its representations at the 6 week stage of the appeal, as the officer dealing with the appeals had been off work, 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 ground (f) and (g) appeal.
 13. The Council has made little effort in defending its position on grounds (a), (f) and (g). It is not a defence to suggest that there has not been wasted expense as a result of this, following the missed deadline. Had the applicant known the extent of the Council's case with regard to these grounds, he may not have prepared his case as comprehensively as he did.

14. 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.

15. 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.

16. This has resulted in unnecessary or wasted expense during the appeal process, but only with regard to that incurred by the applicant in preparation of his grounds (a), (f) and (g) appeal. Accordingly, a partial award for costs is justified.

Costs Order

17. 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 limited to those costs incurred in making the appeal on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. 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