



Costs Decision

Inquiry held on 11, 12 & 13 October 2023 & 20 November 2023

Site visit made on 20 November 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7/03/24

Costs application in relation to Appeal Ref: APP/P4605/C/22/3293098 3 Wye Cliff Road, Handsworth, Birmingham B20 3TA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Shiraz Ali for a full or partial award of costs against Birmingham City Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised change of use from C3 single dwelling house to 9 bedroom supported accommodation (Sui Generis).
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Decision

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

Preliminary Matters

2. The applicant's costs application was made in writing prior to the Inquiry. The Council responded to the costs application in writing prior to the Inquiry and in writing during the Inquiry. The Inquiry was kept open to allow the applicant to respond to Council's response in writing. The Inquiry was closed in writing.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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. Unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The applicant's application for costs is both procedural and substantive.
4. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example, by complying with the requirements and deadlines of the process. The Council submitted a document called "Supplemental Statement of Case", outside the timescale for submission of Statements. The Council has confirmed this statement is its final comments, which were submitted within the timescales set out by the Planning Inspectorate. The Council has therefore not been unreasonable in this respect.
5. The PPG advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

6. The applicant asserts that the enforcement notice is a nullity and that they should be awarded their full costs in this scenario, since none of the costs of an appeal should have been incurred. However, as will be seen from my decision letter, I do not consider the enforcement notice is a nullity and have upheld the enforcement notice.
7. While the Council did not identify the Ashton, Newton and Lozells Area Action Plan in its reasons within the enforcement notice, the Council has not identified a policy within the document the appeal scheme conflicts with. The Council advises its inclusion of the document is to provide context and assist in understanding Council objectives, strategies and policies, as referenced in policy DM11.
8. Furthermore, even if I were to conclude the Council was unreasonable in failing to refer to the document in its reasons, the applicant has had ample opportunity to address its relevance to the appeal. It has therefore not caused delay in terms of the appeal and there has been no wasted expense in addressing it.
9. The Council set out its case under ground (d) in its Statement of Case and officers of the Council gave evidence to the Inquiry, under affirmation, in support of its case. Various documentation has also been provided, such as Council Tax information, letters, emails and photographs.
10. The applicant suggests the Council's case focusses largely on a period falling outside of the relevant ten-year period (which commences 18 January 2012) without explanation as to why this is relevant (including whether the site was in a C2 use).
11. However, as explained in my decision letter, immunity can accrue during any ten-year period. The applicant has provided documentation regarding the use of the site prior to 18 January 2012 and so it was not unreasonable for the Council to consider it, and to consider whether the site was in a C2 use.
12. It is not disputed that a breach has occurred and, as can be seen from my decision letter, the appeal under ground (d) has failed. I do not consider, therefore, that the appeal could have been avoided by more diligent investigation.
13. The PPG advises an LPA is at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal or make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
14. The Council's reasons for taking enforcement action are clearly set out in the enforcement notice. The Council has provided a Statement of Case (SoC) setting out its objections to the appeal scheme in relation to each of its objections. The SoC explains how the Council has considered each reason for taking enforcement action and further analysis is provided in Mr Barton's proof of evidence.
15. Although the Council's SoC relies on the 2013 Strategic Housing Market Assessment (the SHMA), this is the evidence base upon which policy DM11 was based. Furthermore, through the appeal, the Council provided an updated assessment, the Birmingham Housing and Economic Development Needs

Assessment, April 2022 (the HEDNA)¹, and carried out analysis on its implications for the appeal.

16. With respect to the ground (a) appeal, officers of the Council gave evidence to the Inquiry, under affirmation, in support of its case and Police Sergeant Lampitt also gave evidence to the Inquiry. Documentation from West Midlands Police has also been provided.
17. Mr Barton set out how the Council has considered the Public Sector Equality Duty in his proof of evidence. As set out in *R(oao Baker) v SSCLG* [2008] EWCA Civ 141, the PSED is not a duty to eliminate discrimination, advance opportunity or foster good relations, it is a duty to have 'due regard' to the three aims when making decisions.
18. As can be seen from my decision letter, while I have found upholding the notice and refusing planning permission is necessary and proportionate. The Council has had due to regard to the three aims when making the decision.
19. The Council has substantiated its reasons for taking enforcement action and, as will be seen from my decision letter, I have found that, as a result of the harms identified, the appeal scheme conflicts with the development plan as a whole. The Council has therefore not been unreasonable in this regard.
20. Thus, for the reasons given above, I cannot conclude the Council has behaved unreasonably and so the application for an award of costs must fail.

Conclusion

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

M Savage

INSPECTOR

¹ Published after the appeal was made.