



Costs Decision

Site visit made on 5 March 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Costs application in relation to Appeal A Ref: APP/A5270/C/22/3303842 and Appeal B Ref: APP/A5270/C/22/3312143

Premises known as 322 Allenby Road, Southall, Middlesex UB1 2HR

- 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 the Council of the London Borough of Ealing for a full award of costs against Mr Manjit Dhaliwal.
 - The appeals were against two enforcement notices alleging the construction of an additional rear extension (Appeal A), and the material change of use of the building to a use as two separate flats and a small HMO, the construction of a boiler storage structure and construction of a single storey rear extension (Appeal B).
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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 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 application is made in respect of both procedural and substantive matters.
4. There was a period of some 4 months between the making of Appeal A and Appeal B. Much of the cost applicant's (the Council's) case relates to a change to some of the respondent's (the appellant's) evidence between Appeal A and Appeal B. I can see that the appellant made Appeal A himself, but that during the Appeal B process he employed the services of a professional agent. This may explain some of the differences between the evidence and how it has been presented.
5. In addition to the above, between making Appeal A and Appeal B, I have noted that the appellant changed his reasons for some of the development subject of the appeals. I can, however, see that during this time his wife was ill and subsequently passed away. I also note that the appellant became ill himself. This might explain why there is some inconsistency in the appellant's evidence.
6. I also note that the appellant has changed his position on certain matters between making Appeal B and the submission of his appeal statement relating to both appeals. This includes a ground (b), (c), and (d) case for the operational development subject of the second notice. This does not demonstrate the good practice that is encouraged by the PPG, both in terms of timeliness and in the presentation of full and detailed evidence to support a

party's case. However, I note that the Council has had an opportunity to respond to the points made by the appellant during the ordinary course of providing final comments. Whilst the appellant may have demonstrated unreasonable behaviour by not making out his full case at the start of the appeal process, I cannot regard the Council's response to the appellant's case as wasted expense.

7. On a separate matter, the Council suggest that certain aspects of the appellant's case stood no chance of success. The appellant was entitled to rely on the interaction between the occupiers of the first floor and ground floor units of accommodation in making his ground (b) appeal. Whilst I did not agree that this meant that the two units of accommodation formed a single dwelling, the appellant put forward a robust argument. I do not find this element of the appellant's case to be misleading; it is not impossible for the first floor occupiers to be the appellant's tenants, as well as his carers.
8. I do not find the appellant to have behaved unreasonably in making a ground (b) appeal in respect of the boiler storage structure. Prior to its construction, it is clear that a structure of some form existed in its approximate location. The appellant's recollection that the new structure is a refurbishment of the existing is not, therefore, so misguided as to make this element of the case unreasonable.
9. The appellant may well have misunderstood the application of The Town and Country Planning (General Permitted Development) (England) Order 2015 with regard to the boiler storage structure. I would not, however, go as far as to say that this element of the appellant's case was unreasonably made, not least because the appeal property was formerly a single dwellinghouse.
10. As for the appellant's ground (d) appeal, the allegation is of a material change of use, which includes the creation of the ground floor flat to the rear. The appellant provided evidence to support his ground (d) appeal as it relates to this flat, which includes the series of tenancy agreements. This evidence provided some support to the appellant's case. Whilst I did not consider the totality of the evidence sufficient, on balance, to discharge the burden of proof, I cannot regard this aspect of the appellant's case to be hopeless.
11. I cannot agree that the appellant offered no case on the ground (a) appeal in respect of the material change of use of the property. There was some merit to the appellant's case made in respect of the whole deemed application for planning permission, including his personal circumstances. The appellant also attempted to respond to the Council's objections to the development, and did so with reference to the relevant development plan policies. Accordingly, I do not find the appellant's case on ground (a) to have been hopeless. I conclude the same with regard to his ground (f) and (g) appeal. The appellant has provided legitimate reasons for making his ground (f) appeal and for seeking additional time to comply with the second notice. Whilst I have not found these sufficient for me to vary the terms of the second notice, the appellant's case in this regard was not unreasonably made.

12. To conclude, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR