



Costs Decisions

Site visit made on 14 August 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Costs applications in relation to Appeal Ref: APP/X5210/C/24/3340116 Flat 4, 39 Belsize Square, LONDON, NW3 4HL

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is made by the Council of the London Borough of Camden for a partial award of costs against Westgrove Management Limited.
 - **Application B** is made by Westgrove Management Limited for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against an enforcement notice alleging the material change of use of a flat to use as 2 flats.
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Decisions

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

Application A

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 Council submits that it was unreasonable behaviour on the part of the appellant to request that the appeal proceed by Inquiry, with the result that it had to go to the unnecessary expense of appointing a barrister to attend the Case Management Conference (CMC) at which it was agreed that written representations was the more appropriate procedure.
4. At the outset the appellant had indicated that an Inquiry was likely to be required because they had appealed on ground (d), claiming immunity from enforcement. They had indicated that 2 witnesses would be called, though it was not claimed that they would give factual evidence. But in any case, the decision to start the appeal as an Inquiry was made by the Planning Inspectorate, and the parties were advised that the procedure would be kept under review. A need to hear evidence under oath was not the only reason given for starting the appeal as an Inquiry. The CMC held at an early stage of the timetable and was an appropriate opportunity to review the procedure in the light of the parties' statements of case. At that point my decision to change procedure was informed by a better understanding of the respective cases. Having understood the appellant's case, I did not consider at the time that an Inquiry would be wholly inappropriate, nor did I consider the suggestion as being unreasonable. On balance I considered that the appeal was suited to the written representations procedure, and the parties helpfully agreed, but without the benefit of the CMC and the views of the participants I might not have come to that view.

5. The Council has also contended that the hostile approach adopted by the appellant and their agent has failed to mitigate the costs despite numerous opportunities afforded to them. However, that has not been elaborated upon and nor has it been substantiated.
6. Overall, I am not persuaded that unreasonable behaviour by the appellant causing unnecessary or wasted expense on the part of the Council has been demonstrated, so an award of costs is not justified.

Application B

7. The unreasonable behaviour alleged by the appellant is issuing the Enforcement Notice and thereafter maintaining its position. In part this is founded on a claim that the Council misunderstood its own policies, but as should be clear from my decision I do not agree. Another matter raised was the claim by the Council that it would support its case by reference to appeal decisions. As it transpired, I was only provided with one decision, but although brief it did show support for the Council's position. I have no idea whether there are others or not, and possibly if the appeal had proceeded by Inquiry this could have been explored. But bearing in mind that the Council's first statement of case was prepared for an Inquiry and in which it need only say what evidence it will be relying upon, and that its subsequent written representations statement was accompanied by the relevant decision, I do not consider the earlier claim to have comprised unreasonable behaviour, even if it caused wasted expense by the appellant in searching the public database.
8. Relations between the parties in the planning application process, including claims of hostility, are only peripherally relevant, but in any case unreasonable behaviour in that process has not been substantiated by evidence.
9. Part of the claim amounts to an argument that the Council were wrong not to accede to offers to find a mutually agreeable solution, but while cooperation and engagement are encouraged, that is ultimately between the parties.
10. Finally, the 1995 permission for works in Flat 2 by Ms H, covered in my decision, is raised as an example of the Council's lack of cooperation, among other things. As my decision should make clear, that permission had no relevance to the issues before me, and in fact the Council was correct.
11. In short, unreasonable behaviour leading to unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

Paul Dignan

INSPECTOR