

Costs Decisions

Inquiry Held on 3 and 4 September 2024; Site visit made on 4 September 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Costs application in relation to Appeal B: Ref APP/P5870/X/24/3343565 1 Fenton Close, Wallington, Sutton SM6 0ES

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Phillips (MP Developments Ltd) for a full award of costs against the Council of the London Borough of Sutton.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for a 2-storey, 4-bedroom detached dwelling.
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Costs application in relation to Appeal C: Ref APP/P5870/X/24/3343624 2 Fenton Close, Wallington, Sutton SM6 0ES

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Phillips (MP Developments Ltd) for a full award of costs against the Council of the London Borough of Sutton.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for a 2-storey, 4-bedroom detached dwelling.
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Costs application in relation to Appeal D: Ref APP/P5870/X/24/3343625 3 Fenton Close, Wallington, Sutton SM6 0ES

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Phillips (MP Developments Ltd) for a full award of costs against the Council of the London Borough of Sutton.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for a 2-storey, 4-bedroom detached dwelling.
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Costs application in relation to Appeal E: Ref APP/P5870/X/24/3343629 4 Fenton Close, Wallington, Sutton SM6 0ES

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Phillips (MP Developments Ltd) for a full award of costs against the Council of the London Borough of Sutton.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for a 2-storey, 4-bedroom detached dwelling.
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Decisions

1. The application for an award of costs is refused in respect of Appeal B.
 2. The application for an award of costs is refused in respect of Appeal C.
 3. The application for an award of costs is refused in respect of Appeal D.
 4. The application for an award of costs is refused in respect of Appeal E.
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Reasons

5. The Planning Practice Guidance 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.
6. The appellant says that the Council has behaved unreasonably in acting contrary to, or not following, well-established case law in refusing the LDC applications subject to the appeals.
7. However, as explained in my Decisions on the appeals, the cited cases of *Rapose*¹ and *Robert Hitchens*² relate to development which has not been completed. It is relevant that the appeal developments have, as a matter of fact and degree, been completed (with completed, yet unauthorised, tiled roofing constructed at positions where approved chimneys should exist under the conditioned plans). This has been the Council's position throughout the appeals (and, indeed, significant evidence has also been submitted from the appellant as to completion). Accordingly, I do not find that the Council acted contrary to, or did not follow, well-established case law.
8. The appellant says that, essentially, the Council's position on this matter was 'so fanciful to be unreasonable'. However, there is nothing fanciful or unreasonable in expecting (in determining lawfulness) a development – which, on all the facts, has been completed – to materially comply with approved plans which have been secured by conditional planning permission. This was analysed in Mr Grierson's Proof of Evidence (6.32 to 6.35) and, despite some robust cross-examination on the matter, he stuck by that evidence.

Conclusions

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

Andrew Walker

INSPECTOR

¹ *Rapose v London Borough of Wandsworth* [2010] EWHC 3126 (Admin)

² *R(Robert Hitchens Ltd) v Worcestershire CC* [2015] EWCA Civ 1060