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Your Ref:
Our Ref: APP/X5210/X/23/3325618
APP/X5210 /X/23/3325801
APP/X5210/C/24/3341183

Date: 04 October 2024

Dear Sir/ Madam

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174, 195, 320
AND 322
APPEALS BY: YARDSPIN LIMITED
LAND AT: 267 EVERSOLT STREET, LONDON NW1 1BA
APPLICATIONS FOR COSTS

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's correspondence of 11 September 2024. The letter confirmed the withdrawal of the two section 195 appeals against the failure by the Council of the London Borough of Camden to give notice of their decisions within an appropriate period on applications for a certificate of lawful use or development (the LDC appeals). Lawful development certificates for an existing use were sought for (i) use as five flats (ground floor and basement), and (ii) use as 10 flats (first, second, third, fourth floors and loft).
2. The letter also confirmed the appeal against an enforcement notice issued by the Council of the London Borough of Camden on 9 February 2024 will be proceeding on grounds (b), (c), (f) and (g), following the withdrawal of grounds (d) and (a). The enforcement notice concerned an alleged breach of planning control, described in paragraph 3 of the notice as:
Without planning permission: Material change of use of the Property from mixed use consisting of 3 flats (Use Class C3 residential use) and 1 commercial unit (Class E) to 15 units of temporary sleeping accommodation (Use Class C1 Hotels) on the ground, first, second, third, fourth and fifth floors, with ancillary concierge/office space on the ground floor.

3. This letter deals with the Council's applications for an award of costs against the appellant as made in the written application and the final oral response made at the inquiry on 11 September 2024 and the appellant's written response of 11 September 2024, as amended at the inquiry. As all these costs submissions have been available to the parties it is not proposed to summarise them. They have been carefully considered.

Summary of Decisions

4. The costs applications in respect of the LDC appeals succeed and a full award of costs will be made. The costs application in relation to the appeal against the enforcement notice succeeds and a partial award of costs will be made. The formal decisions and costs orders are set out in paragraphs 29 to 37 below.

Basis for determining the costs applications

5. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of unreasonable behaviour resulting in unnecessary or wasted expense.
6. The applications for costs have been considered with reference to the Government's Planning Practice Guidance (PPG) on awards of costs (as published on the Gov.uk website under "Appeals"), the appeals papers, the written costs submissions and final oral response and all the relevant circumstances.

Withdrawal of LDC Appeals and Grounds (a) and (d) Reasons for the Decisions

7. The costs applications in respect of the LDC appeals were made together with the costs application in respect of the enforcement notice appeal (grounds (a) and (d)). The applications are closely related and will be dealt with together. All the available evidence has been carefully considered. The decisive issue is whether or not the appellant acted unreasonably by withdrawing the appeals when they did, causing the Council to incur unnecessary or wasted expense in the appeal process.
8. Of particular relevance is the guidance at paragraphs 052, 053 and 054 of the costs PPG regarding an award of costs against an appellant. Withdrawal of an appeal without good reason may give rise to a procedural award against an appellant. If an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising on the appeal, an award of costs may be made against the appellant if the claiming party can clearly show that they have incurred wasted expense as a result. If a costs award is justified, the costs order can only address the principle of whether costs should be awarded in full or in part, and not the amount – this is settled subsequently between the parties (paragraph 044). The sequence of events leading to the withdrawal of the appeals has been carefully considered.

Summary of Chronology

9. The LDC appeals were made on 10 July (ref 3323618) and 12 July 2023 (ref 3325801). The appeals were accompanied by a planning statement and supporting evidence including copies of tenancy agreements, landlords and tenant evidence and insurance documents. The Planning Inspectorate confirmed the appeals were valid by letters dated 17 August 2023. At that time the appeals were to be determined by the written representations procedure.
10. The Council submitted the appeals questionnaire on 17 August 2023. The officer delegated report on the LDC appeals was submitted on 28 September 2023 as the Council's initial statement of case and a request was made to change the procedure to an inquiry. The procedure was reviewed and on 6 December 2023 the parties were informed by the Planning Inspectorate that the appeals would be determined through the inquiry procedure. The Council's statement of case was submitted on 13 February 2024 and exchange of statements of case took place on 16 February 2024.
11. The enforcement notice was issued on 9 February 2024 and the appeal against the notice was dated 21 March 2024. The appeal was made on grounds (a), (b), (c), (d), (f) and (g) under Section 174(2) of the 1990 Act. The Inspectorate's Start Letter of 16 April 2024 confirmed the appeal would be dealt with by way of an Inquiry. The appeal was linked to the LDC appeals. The statements of case by the appellant and the Council were submitted on 31 May 2024.
12. The appeal process for all appeals progressed towards the inquiry and included a Case Management Conference on 10 June 2024. The Council's proof of evidence dealing with all three appeals was submitted on 14 August. The appellant's proof and documents for the three appeals were submitted on 16 August, with additional documents following shortly after. The Council requested an extension of time to submit a rebuttal, one reason being the substantial amount of information and documentation submitted with the appellant's proof. A rebuttal was submitted on 5 September. The inquiry opened on 10 September and immediately the appellant confirmed that the LDC appeals and the appeals on grounds (a) and (d) were withdrawn. The Council stated they were given about 45 minutes oral notice of the appellant's intention.

Appraisal

13. As the LDC appeals have been withdrawn, thus ending the proceedings, the issues arising on those appeals remain unresolved and the Secretary of State has no further jurisdiction in the matter. There are no substantive decisions, following a consideration of evidence on lawfulness, against which it is possible to assess the grounds pleaded. The enforcement notice appeal continued to a decision, where the appeals on grounds (b), (c), and (f) failed and there was partial success on ground (g). The notice has been upheld with corrections and a variation to extend the time for

compliance. The Council was reasonable in issuing the enforcement notice at the outset.

14. The LDC appeals were withdrawn over a year after they were made. The appeals on grounds (a) and (d) were withdrawn around 6 months after the appeal against the enforcement notice was made. The appeals' process was at an advanced stage. Parties are encouraged to keep their cases under review. The appellant agreed that the LDC appeals and grounds (a) and (d) in the enforcement notice appeal were withdrawn at a late stage, without good reason. The appellant in principle acknowledged unreasonable behaviour occurred.
15. As an additional consideration, a ground (d) appeal is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. In this case the matters are a material change of use to 15 units of temporary sleeping accommodation (Class C1), with ancillary concierge/office space. In its statement of case the Council focussed on the lawfulness of this development. The Council also disputed the reasonableness of the ground (d) appeal set out in the appeal form, which was based on each of the 15 units being in use as a C3 self-contained residential unit for more than 4 years preceding the date of the notice. The appellant's statement of case clarified that the ground (d) case relied on a correction to the description of the alleged breach of planning control to "use of the building, except for the front area of the ground floor, as fifteen self-contained units." The appellant later submitted in their proof of evidence, and in their closing submissions, such a correction to the notice would cause injustice to the appellant. The ground (d) appeal was unreasonable from the outset.
16. The right of appeal should be exercised in a reasonable manner. It is an appellant's responsibility to ensure that before deciding to appeal they are confident of the strength of their case and are in a position to pursue it through to decision. On matters of lawfulness the onus of proof is on an appellant. There is no evidence before the Secretary of State of a material change of circumstances occurring since the appeals were submitted to justify the appellant's decision to withdraw the LDC appeals and ground (a) and (d) appeals. The action amounts to unreasonable behaviour, the result of which caused the Council to incur wasted expense in the appeals process to ensure procedural requirements were met at all stages and in preparing for the inquiry. An award of costs will therefore be made in respect of the LDC appeals and grounds (a) and (d) in the appeal against the enforcement notice.

Broad extent of the awards

17. The Secretary of State can only address the principle of whether costs should be awarded in full or in part. As explained above, the amount is settled between the parties at a later date. The appellant put forward various matters for consideration.

18. All parties are expected to behave reasonably throughout the planning process, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding. The LDC appeals were made on the grounds of non-determination. The Council considered the submitted evidence in detail after the appeals were made, first through the officer delegated report and subsequently through the statement of case. The documentation does not indicate duplication of detailed assessment work done before the appeals were made.
19. Consideration has been given as to whether the same costs would have been incurred by the Council to defend the ground (b) appeal as were incurred on the LDC appeals and the ground (d) appeal. The Council's case on the ground (b) appeal was based primarily on the enforcement investigation history, including the internal inspection of the property on 16 May 2023, a visit carried out prior to the submission of the LDC appeals. The officer report and the statement of case for the LDC appeals demonstrate that the Council also considered in detail the substantial volume of evidence submitted by the appellant for the LDC appeals. Expense was incurred which became wasted as a result of the appellant's decision to withdraw the LDC appeals.
20. The appellant made submissions that most of the additional evidence supporting the ground (d) appeal was directly relevant to the ground (b) appeal. This evidence, to cover the period post the certificate application dates, was identified as the Foxton's evidence, the non Foxton's tenancy agreements and three additional tenancy agreements (the Appendix 34 documents).
21. The Council focused on the Foxton's evidence when examining the ground (b) case at the inquiry, unsurprisingly so in that the appellant's sole witness was a Lettings Manager at the Foxton's Camden office. To that extent expense incurred in considering the Foxton's evidence was not wasted. The Council also considered the other tenancy agreements for the ground (b) appeal and the associated expense was not wasted. However, additional time may have been spent and expense incurred in considering such evidence in the context of the different grounds of appeal. That is a matter more appropriately considered at the next stage when details of costs are submitted following on from the costs order.
22. After a review of the respective cases the procedure to determine the LDC appeals was changed to an inquiry to allow factual evidence to be given on oath and be tested through formal examination. The inquiry was programmed for four days, although the length was dependent on the appellant's confirmation of the number of witnesses that would be called. The LDC appeals and the ground (d) appeal were withdrawn promptly after the inquiry opened and consequently no significant actual inquiry time was spent on those appeals. Nevertheless, the Council would have spent time in preparation for the inquiry and in adjusting its case, presentation and submissions at very short notice.
23. The facts for the ground (a) appeal set out on the appeal form were brief but included reference to a unilateral undertaking. The Council would not

have been aware of the narrow focus described by the appellant in their statement of case. The Council's statement of case included a section on policy and a section addressing the ground (a) appeal that extended over seven pages. The Council addressed the ground (a) appeal in the proof of evidence, although not in their rebuttal. In responding orally to the appellant's submissions on the costs application the Council also referred to the additional work in preparation for the inquiry to address the case presented by the appellant in the proof of evidence. As a matter of fact the Council provided extensive comments on the draft unilateral undertaking with a view to assisting the inquiry and to inform determination of the ground (a) appeal. The time and expense of doing so were wasted. The dispute over the Council's legal expenses incurred on the unilateral undertaking is not a matter for consideration at this stage of the costs process. The documentation demonstrates that the unnecessary expense incurred by the Council on the ground (a) appeal was more extensive than described by the appellant in their costs response. All the expense incurred by the Council on the ground (a) appeal, including the unilateral undertaking, was unnecessary and wasted.

Application in relation to Ground (f) Reasons for the Decision

24. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The purpose of the enforcement notice for 267 Eversholt Street is to remedy the breach of planning control. The decisive issue regarding the costs application is whether or not the appellant acted unreasonably by pursuing an appeal on ground (f), causing the Council to incur unnecessary or wasted expense in the appeal process.
25. The ground (f) appeal initially stated a reduction to only three residential units within the building would be excessive and matters were raised related to the retention of kitchen, cooking and bathroom facilities. The statement of case clarified the appellant's case centred on two matters – the retention of a kitchen and bathroom facilities in any unit found to be lawful and the need to take account of Section 25A of the Greater London Council (General Powers Act) 1973 in requiring the cessation of the use as temporary sleeping accommodation. These two matters were repeated in the appellant's proof of evidence.
26. The Council responded to the ground (f) appeal in its statement of case (paragraphs 9.1.1 to 9.6) and proof of evidence (paragraphs 44 to 47). The proof included a response on the additional matter raised on protecting legal rights, pointing out these were protected irrespective of the notice.
27. The review of the process shows the appellant's case on ground (f) was expanded during the appeal process. The first argument was closely linked to the lawfulness of the units, which the appellant no longer defended at

the inquiry. The second strand to the case was contrary to established case law. The Council would have carried out work to come prepared to cover all aspects of the ground (f) appeal at the inquiry. The total amount of work undertaken by the Council was significant and not de minimis. Unreasonable behaviour occurred and the Council incurred unnecessary expense in the enforcement appeal process related to the ground (f) appeal.

Overall Conclusions

28. Having carefully considered all the matters raised, the conditions necessary for a full award of costs against the appellant are met in respect of the LDC appeals. The conditions necessary for a partial award of costs against the appellant are met in respect of the appeal against the enforcement notice. The awards of costs include the expense of making the costs applications (PPG paragraph 040).

FORMAL DECISION LDC APPEAL Ref APP/X5210/X/23/3325618

29. For the reasons given above the Secretary of State has decided that in the particular circumstances an award of full costs against the appellant is justified on the grounds of unreasonable behaviour resulting in wasted or unnecessary expense.

Costs Order

30. Accordingly, the Secretary of State for Housing, Communities and Local Government in exercise of their powers under section 250(5) of the Local Government Act 1972, and sections 195 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling the Secretary of State in that behalf, **HEREBY ORDERS** that Yardspin Limited shall pay to the Council of the London Borough of Camden their full costs of the LDC appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Court Costs Office if not agreed.
31. You are now invited to submit details of those costs to Yardspin Limited, with a view to reaching an agreement on the amount. A copy of this letter has been sent to the appellant's agent.

FORMAL DECISION LDC APPEAL Ref APP/X5210/X/23/3325801

32. For the reasons given above the Secretary of State has decided that in the particular circumstances an award of full costs against the appellant is justified on the grounds of unreasonable behaviour resulting in wasted or unnecessary expense.

Costs Order

33. Accordingly, the Secretary of State for Housing, Communities and Local Government in exercise of their powers under section 250(5) of the Local Government Act 1972, and sections 195 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling the

Secretary of State in that behalf, **HEREBY ORDERS** that Yardspin Limited shall pay to the Council of the London Borough of Camden their full costs of the LDC appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Court Costs Office if not agreed.

34. You are now invited to submit details of those costs to Yardspin Limited, with a view to reaching an agreement on the amount. A copy of this letter has been sent to the appellant's agent.

**FORMAL DECISION ENFORCEMENT NOTICE APPEAL Ref
APP/X5210/C/24/3341183**

35. For the reasons given above the Secretary of State has decided that in the particular circumstances unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the appeals on grounds (a), (d) and (f) and a partial award of costs is therefore justified.

Costs Order

36. Accordingly, the Secretary of State for Housing, Communities and Local Government in exercise of their powers under section 250(5) of the Local Government Act 1972, and sections 174 and 320 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling the Secretary of State in that behalf, **HEREBY ORDERS** that Yardspin Limited shall pay to the Council of the London Borough of Camden their costs of the enforcement appeal proceedings before the Secretary of State limited to those costs in relation to the appeals on grounds (a), (d) and (f), such costs to be assessed in the Senior Court Costs Office if not agreed.
37. You are now invited to submit details of those costs to Yardspin Limited, to whose agent a copy of this decision has been sent, with a view to reaching an agreement on the amount.

Yours faithfully

Diane Lewis

Authorised by the Secretary of State to sign in that behalf