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## Costs Decision

Hearing held on 17 September 2024

Site visit made on [ ]

**by A Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 October 2024**

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### **Costs application in relation to:**

**Appeal A Ref: APP/B4215/C/23/3320680**

**Appeal B Ref: APP/B4215/C/23/3320691**

**98 Wilmslow Road, Manchester, M14 5AL**

- 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 Manchester City Council for a partial award of costs against Mr Ibrahim Mirza on behalf of A Road Ltd and Mr Arsalan Ali.
  - The appeal was against an enforcement notice alleging the failure to comply with conditions imposed on a planning permission ref 118025/FO/2017 granted on 11 June 2018.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **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 Council seeks a partial award of costs on the basis that the appellants' ground (c) appeal is misconceived and should not have been made.
4. The alleged breach of planning control set out in paragraph 3 of the enforcement notice (the notice) is that conditions have been breached. S171A(1) of the Act states 'For the purposes of this Act— (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.' The breach of a condition subject to which planning permission has been granted is, by definition, a breach of planning control.
5. The appellants' ground (c) appeal was made on the basis that a material change of use has not occurred. However, the notice makes no such allegation. The Council raised this misunderstanding with the appellants' agent in an email dated 6 July 2023, with an indication that a costs application would be made if they continued with this ground of appeal. The Council received no response to their email.
6. The PPG states an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of

succeeding<sup>1</sup>. The ground (c) appeal is made on the basis the notice alleges a material change of use, which, as a matter of fact, is not the case. Regardless of whether this was a misunderstanding on behalf of the appellants, the ground of appeal clearly had no hope of succeeding. Furthermore, even after the misunderstanding was identified to them by the Council, they proceeded in pursuing the ground of appeal. Whether or not the ground (c) appeals were a small part of the overall appeals made by the appellants is irrelevant. I find therefore making the ground (c) appeals, on the basis of the arguments made in support of them, was unreasonable behaviour on behalf of the appellants.

7. Whilst I acknowledge the appellants' right to make any grounds of appeal they so wish, they should not be made frivolously without merit.
8. The Council were right to respond to the arguments made in support of the ground (c) appeals, even though they considered they were made on the misunderstanding of the allegation set out in the notice. It was not for them to make a decision on the matter; that was for me. The Council would have spent time, and therefore expense, in responding to the ground (c) appeals.
9. I also note the appellants' contention that no additional hearing time was necessary for the ground (c) appeals. However, that is not correct. The ground (c) appeal was discussed during the hearing and it was pointed out to the appellant that the notice does not allege a material change of use. In asking the appellants 'Are you alleging the notice alleges a material change of use of the land?' the response I received was 'no'. The appellants still persisted in pursuing the ground (c) appeals.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Ibrahim Mirza on behalf of A Road Ltd and Mr Arsalan Ali shall pay to Manchester City Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the ground (c) appeals; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Ibrahim Mirza on behalf of A Road Ltd and Mr Arsalan Ali, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*A Walker*

INSPECTOR

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<sup>1</sup> Paragraph: 053 Reference ID: 16-053-20140306