



Costs Decision

Hearing held on 8 October 2024

Site visit made on 9 October 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 1st November 2024

Costs application in relation to Appeal A Ref: APP/K5600/C/24/3345933 Land at 106 Cheyne Walk, London SW10 0DG

- 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 Mr Andrew Moffat of the Chelsea Yacht and Boat Company Limited for a full award of costs against the Royal Borough of Kensington and Chelsea.
 - The appeal was against an enforcement notice alleging the material change of use of the Land through intensification.
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Costs application in relation to Appeal B Ref: APP/K5600/X/24/3345934 Land at 106 Cheyne Walk, London SW10 0DB

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Moffat of the Chelsea Yacht and Boat Company Limited for a full award of costs against the Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for moorings at 106 Cheyne Walk.
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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 award of costs is pursued on four related grounds: (a) the Council unreasonably issued the enforcement notice (necessitating the separate appeal) notwithstanding the ongoing LDC application as a means of alternative dispute resolution; (b) the notice and LDC refusal are based on vague, generalised or inaccurate assertions about the impact of the houseboats and the claim of intensification, unsupported by any objective analysis, as well as being contrary to well-established case law on intensification; (c) an unreasonable refusal to engage with the Appellant to agree a Statement of Common Ground; and (d) acting contrary to, or not following, well-established case law.
4. In relation to the first ground, the enforcement investigation was underway prior to the submission of the LDC application on 20 February 2024. The Council had determined in its meeting of the Planning Applications Committee, on 19 December 2023, that a material change of use had taken place.

5. Officers were asked to consider whether it would be expedient to take enforcement action. The Committee subsequently decided, on 27 February and 7 May 2024, that it was expedient to issue an enforcement notice (against three houseboats and then against two houseboats), and that the LDC application should be refused. The Council issued the notice on 8 May 2024 and refused the LDC application on 9 May 2024.
6. It is not apparent that the appeals could have been avoided because the position of the Council was not in doubt. Given the finding that a breach of planning control had taken place, it would be unlikely that any LDC application would have been successful. In any event, the grounds of appeal arising from the LDC refusal were incorporated into the ground (c) appeal against the enforcement notice. The main issues in each case were very similar and did not necessitate separate appeal submissions. I do not consider that the LDC submission would have been an alternative means of resolving the issue given the Council's concerns, which were known in advance.
7. The second ground is that the Council has failed to demonstrate and justify its conclusions as to why a breach of planning control through intensification has taken place. The Council's statements and submissions were relatively detailed and included objective analysis. Although I ultimately disagreed with the Council's judgment on the matters at issue, I am satisfied that the Council carried out proper prior investigation, and the evidence in support of its decisions was well-argued. It is correct that the Committee took decisions against the advice of planning officers, but it is entitled to do so. It is not apparent that the appeals were bound to succeed.
8. It is further argued that the Council failed to engage to agree a Statement of Common Ground. There is no requirement for this in the relevant procedural rules¹. I did not request a Statement of Common Ground because the areas of agreement were apparent from the respective hearing statements. In addition, further efforts were made during the Hearing to reach consensus which was of assistance. It also avoided the Hearing proceedings running into a second day.
9. Finally, it is argued that the Council did not follow well-established caselaw. The Council detailed relevant caselaw in its statement and there was little disagreement between the parties in terms of the legal approach. This was a case where I was required to examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances which involved planning judgment. I am satisfied that the Council applied the caselaw correctly but reached a different conclusion.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs, either full or partial, is not warranted.

D Moore

Inspector

¹ Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002/2684.