Costs Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Costs application in relation to Appeal Ref: APP/U5930/X/23/3315876
680 Forest Road, Walthamstow, London E17 3ED

- 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 David Reid for a full award of costs against Waltham Forest London Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for use of the ground and first floor of the property as a house in multiple occupation for five persons and the use of the second floor of the property as a studio flat, which together comprise a class C4 HMO use.

Decision

1. The application for an award of costs is refused.

The submissions for Mr Reid

2. The application centres on the way the Council determined the LDC application. In particular, the Council disregarded the conclusions of two previous enforcement investigations; and appeared to set a higher evidential test than the 'balance of probabilities', namely 'beyond reasonable doubt'. This was unreasonable. The applicant was left with no option other than to lodge an appeal, which amounted to wasted expense.

The response by the Council

3. The Council are careful to redact sensitive information from officer reports before sharing them with the public as enforcement investigation information is not publicly available. The Council also applied the correct test but the applicant's evidence alone was insufficient to justify the grant of a certificate. Thus, there was no unreasonable behaviour that led to wasted expense.

Reasons

4. 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* (my emphasis).

5. As I referred to in my appeal decision, the applicant is aggrieved over how the Council dealt with the reporting of the previous enforcement investigations. It appears to him that the Council wanted to cover up their conclusion from 2016 that the C4 HMO use was lawful. Although the Council's explanation seems logical as to why they redacted the information, a closer look reveals there is no personal data revealed such as the name of the complainant or the names of the occupiers. As this was the applicant's second LDC application, I

understand how he reached the conclusion that the Council had something to hide when they eventually revealed an unredacted copy of the report.

6. This, together with the Council's very strict approach to assessing the evidence, led to the conclusion that the Council were applying a higher evidential test. However, I find that is not the case. The officer report shows the Council were being extremely thorough and analytical, which is their role in determining LDC applications. Even if they had produced the documentation held by the Business Support Officer, the onus is on the applicant to demonstrate their case with evidence that is precise and unambiguous. In addition, the conclusions of the 2016 enforcement investigation were the view of one officer and were not a formal decision of the Council.

7. I have disagreed with the Council's interpretation of the evidence but they were entitled to reach a decision based on the information before them. Their actions with regard to the enforcement investigations information could have been handled better but do not amount to unreasonable behaviour. Similarly, their assessment of the evidence was meticulous, not necessarily weighing it according to the higher test. As such, there was no unnecessary loss or wasted expense in the appeal process. The applicant's frustrations are understandable, however, the appeal could not have been avoided.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, in the appeal process, as described in the PPG, has not been demonstrated.

D Fleming

INSPECTOR