



Costs Decision

Inquiry held on 11-13 and 18 November 2024

Site visit made on 11 November 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Costs application in relation to

Appeal A Ref: APP/X5990/C/23/3326185

Appeal B Ref: APP/X5990/C/23/3326186

Appeal C Ref: APP/X5990/W/23/3325502

Armitage Hall Apartment, 224 Great Portland Street, London W1W 5QP

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Aintaoui for a full award of costs against Westminster City Council.
 - The Inquiry was in connection with an appeal against an enforcement notice alleging, in summary, the erection of plant and screening on a third floor flat roof area and wall; and the refusal of planning permission for some of that plant and screening.
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Decision

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

The submissions for Mr & Mrs Aintaoui

2. The costs application was submitted in writing. The following additional points were made orally.
3. The Council did not serve the enforcement notice ("the Notice") for two years following initial investigation, giving them ample time to visit and/or meet with the appellants, which they did not do.
4. It is incorrect for the Council to say that Dr Lee's affidavit was not misleading because he wrongly gave his address as being Flat 8 Armitage Apartments and his evidence was clearly designed to suggest that he was there. The true situation should have been made clear from the outset. Moreover, problems with Dr Lee's evidence should have been apparent to the Council had they chosen to test his evidence thoroughly before presenting it to the Inquiry. The Council could have pressed Dr Lee to confirm when he first saw parts of the development at the site. Having reviewed the appellants' rebuttal proofs, the Council could still have decided not to call Dr Lee at that stage, given the obvious inconsistencies in timings. That would have saved Inquiry time.
5. The Council has not shown why there was a change of mindset about the effects on outlook between the consideration of two similar planning applications. The statement, on the decision notice for appeal C, that negotiation could not overcome the reasons for refusal, indicates that the Council understands the importance of negotiation, yet they made no attempt to enter into any.

6. If the Council's officers had visited the site, they would have known what was contained in the box housing. There has never been any discussion with the appellants, despite an offer from Mr Drew and no Planning Contravention Notice has been served. The Council never paused to consider whether what was permitted in the past would have had a similar effect on neighbouring residents.
7. The appellants claim the costs of the whole Inquiry because the enforcement action should never have been brought.

The response by Westminster City Council

8. The response was made in writing. The following additional points were made orally.
9. Ms Bartlett, in compiling her report, was entitled to come to her own view as to the effects of the development and was not bound to rely upon the views of other officers. The appellants need to demonstrate both unreasonable behaviour and wasted expense in the appeal process. They have failed to demonstrate wasted expense at all.
10. The Council did not jump to the taking of enforcement action. They gave the appellants time to research the planning history and make planning applications to retain the development. The suggestion that the Council did not undertake a thorough review of the planning history might have some merit if the Council, on receipt of the appellants' evidence had chosen to withdraw the Notice. Instead, the Council has maintained a justifiable defence to all grounds of appeal, as no new evidence has come forward that would have changed its position.
11. It is incorrect that the Council has been led in their action by an organised campaign by nearby residents. Dr Lee's evidence was given openly and his living arrangements, in particular that he did not live in Flat 8, were given through examination in chief and did not require forensic cross examination to reveal facts.

Reasons

12. 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.
13. In investigating the alleged breaches of planning control, the Council appear to have only visited and viewed the site from adjoining properties. I understand that this would have been sufficient to see and understand the effects of the development, but it appears to have prevented a full investigation as to what had actually been installed at the site.
14. In particular, the box housing, which was alleged to contain ducting, actually contains a further item of plant that the Council do not appear to have been aware of until I asked to see inside the box housing during the site visit. Nevertheless, even if they had been aware of that plant, it is a minor part of the alleged unauthorised development and so it is highly unlikely that the Notice would not have been served. My questions about the plant would still

- have needed to be answered during the Inquiry and so, no wasted expense has resulted.
15. Nevertheless, when investigating the alleged breach of planning control, it would clearly have been preferable to see it from the site itself. Not only would that have given opportunity for a proper understanding of the development early on, but it might have opened a more collaborative dialogue between the Council and appellants.
 16. However, even if some form of negotiation had occurred, the Council's position throughout proceedings has remained that there is no planning permission for the matters alleged and that they cause harm to the neighbouring residents. With the exception of a small part of the screening, that only emerged as part of the appellants' case with Mr Drew's proof of evidence, I have agreed with the Council's overall position that the matters alleged do not benefit from planning permission. Therefore, fuller engagement and an earlier scrutiny of the planning history would not have avoided the service of the Notice, or the appeal.
 17. At the Inquiry, the Council produced evidence to support its understanding of critical dates and the sequence of events. The appellants make strong criticism of the way that Dr Lee's evidence detailing this was produced. However, the main purpose of his evidence was to provide photographs and, while some interrogation was required to understand when Dr Lee might have first seen various items at the site, the substantive part of his evidence, being the photographs he was asked to exhibit, was not shown to be wrong. That he only visited the flat once every 4 weeks or so, was clarified through examination in chief, such that the way that the evidence was ultimately presented was not unreasonable. Other matters, such as his detailed knowledge of timings were clarified during cross examination, but did not reveal his evidence to be wrong.
 18. Although he is a neighbouring property owner, Dr Lee was called as a witness to support the Council's case. That does not suggest that the Council gave preferential treatment to interested parties when compared with the appellants, but rather sought to ensure that the evidence they did provide was given by those with a better (albeit not continuous) knowledge of the appeal site than the Council's own officers. In this regard, I do not find the assistance that the Council probably gave to Dr Lee in the preparation of his evidence unreasonable.
 19. In response to the initial allegation, the appellants made a series of planning applications relating to different parts of the development. They were given time to do so, during which a full exploration of the planning history could have been made. While, at one stage, the Council appear to have decided that no harm would arise from the screening, they subsequently made a decision that it would. That is a most unfortunate sequence of events, seemingly arrived at only by a change in officer.
 20. However, having made the latter decision, being the most recent one at the time the decision was taken to serve the Notice, it was entirely reasonable for the Council's enforcement officer to then recommend that it was expedient to take enforcement action to remedy the breach and remove the perceived injury to amenity.

21. That there were allegedly harmful effects arising from the screening is the case the appellants have had to respond to in connection with all three appeals. Ultimately, the Council has maintained its position, provided substantive reasons for it, and I have also found that the screen would be harmful. As such, there has been no wasted expense in the appeal process.
22. While planning enforcement is not punitive and it would be wrong to take action solely because no planning permission existed, the Council's enforcement report sets out that the absence of permission would mean that there would be no conditions controlling matters such as noise emissions.
23. Therefore, even in a scenario where the Council had deemed the physical presence of the development to be acceptable, it would have been expedient to take action to secure the imposition of conditions. Indeed, the permission that I have granted on the ground (a) appeal is a conditional one.
24. Finally, the Council's consistent position has been that the matters alleged should be considered as a single development. It logically follows that the Council may not necessarily need to consider whether harm would arise from each individual component of the matters alleged, as Indeed has been my approach to Appeal C. While I have not agreed with that approach in respect of Appeal A, the Council's position in that regard is for their judgement and not unreasonable.
25. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.
26. The application is refused.

M Bale

INSPECTOR