



Costs Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2024

**Costs application in relation to Appeal Ref: APP/U5930/C/23/3333089
7 St Mary Road, Walthamstow, London E17 9RG**

- 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 Waltham Forest London Borough Council Khan for a partial award of costs against Mr Mudasser Khan.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of a single dwellinghouse to self-contained flats.
-

Decision

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

The applicant's submissions

2. The Council submits that there has been unreasonable behaviour by Mr Khan in that he has presented false and misleading information on a particular matter to support his ground (d) appeal. The nature of the deception was such that the Council were obliged to carry out additional work to verify the facts during the appeal.

The response by Mr Khan

3. Mr Khan accepts there may be discrepancies over some of the information such as the Gas Safety certificates. He endeavoured to investigate these by the time of the 9 week deadline by which Final Comments on the Council's case were due. At the Final Comments stage, he stated he did not recall the details of the gas certificate commissioning process but only Flat 1 has a gas boiler. He does not accept that there was deliberate deception.

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.
5. It seems to me an appeal could not have been avoided. As Mr Khan states, he did not seek to obtain a certificate of lawfulness and therefore lodging an appeal against the enforcement notice was justified in his mind as it was his first opportunity to address matters formally. It is open to the appellant which grounds of appeal they choose but they are at risk of an award of costs being made against them if the ground of appeal they choose has no reasonable prospect of succeeding.
6. The Council followed the guidance set out in the PPG in that they carried out adequate prior investigation before seeking authority to issue the notice. This

included obtaining a warrant to inspect the internal layout of the property, serving a Planning Contravention Notice (PCN) and liaising with colleagues in other Council teams. As there was no response to the PCN, they could have initiated prosecution proceedings to obtain the information they needed. However, they may have had to balance the time this would have taken against issuing the enforcement notice before the use became immune from enforcement action.

7. Once Mr Khan's Grounds of Appeal were received and particularly the information to support ground (d), it was to be expected that the Council would verify this before responding. That is part of a normal appeal process on ground (d). Unfortunately, the Council were put to more work than they expected as there were serious discrepancies in the evidence which took some unravelling and the Council worked with their Internal Fraud Team.
8. It may be that Mr Khan cannot recall the process for obtaining the Gas Safety certificates. Nevertheless, he provided information to the Council that appeared to be untrue, as I found in my decision, in order to conceal the unauthorised use of the building. This amounted to unreasonable behaviour and the Council reasonably incurred unnecessary expense in the appeal process when investigating this.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated. A partial award of costs is justified in respect of the work involved in responding to the appeal on ground (d).

Costs Order

10. 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 Khan shall pay the Council the partial costs of the appeal proceedings described in the heading of this decision and incurred in respect of the work involved in responding to the ground (d) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The Council is now invited to submit to Mr Khan, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Fleming

INSPECTOR