Planning Inspectorate

Costs Decision

Site visit made on 18 December 2024

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

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Costs application in relation to Appeal Ref: APP/N5090/X/24/3350200
Flat 4, The Spinney, 22 Hendon Wood Lane, London NW7 4HR

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr GMP Fitzgerald for a full award of costs against the Council of the London Borough of Barnet.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for use of building as single Class C3 dwellinghouse.

Decision

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

Preliminary Matters

2. The appellant refers extensively to caselaw, much of which is not directly relevant. Several of the cases cited rely on the public law definition of unreasonableness. In costs applications, unreasonable is used in its ordinary meaning as established by the Courts in *Manchester City Council*[1] and not the stricter public law definition of "Wednesbury" unreasonable[2].

3. Other cases are cited as authorities for the principles of (i) the requirement for transparency and consistency in decision making, including matters concerning estoppel and legitimate expectation; (ii) that unreasonableness includes failing to follow clear policy or established legal principles, in this case the application of s175(4) of the 1990 Act; (iii) persisting with positions contrary to binding findings of facts constitutes unreasonable behaviour; (iv) maintaining a position after it has been shown to be untenable is unreasonable; (v) making a fundamental error in reasoning but maintaining the same conclusion through different means is a breach of public law principles; (vi) and a full award of costs is appropriate where the appellant incurs wasted expense. These principles are not in dispute.

4. The case of *LB Brent v SSHCLG & Ebele Muorah* [2022] EWHC 1875 (Admin) is relevant, and I have had regard to this authority in my Decision.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.

[1] *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.
[2] A decision that is so unreasonable that no reasonable authority would ever consider taking it, *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223.

6. The appellant claims that the Council has behaved unreasonably in both procedural and substantive terms. It is argued that the Council (i) failed to understand or apply statutory provisions and caselaw; (ii) improperly applied the provisions of s175(4) of the 1990 Act and failed to review their case promptly when the error was pointed out; (iii) attempted to maintain a refusal after acknowledging its basis was wrong, and then introduced new grounds for refusal; (iv) advanced legally impossible arguments about immunity; (v) attempted to resile from its own evidence and admissions and (vi) failed to respect binding findings of fact from a recent Inspector's decision.

7. It is claimed that the above has led to unnecessary or wasted expense in pursuing the appeal because the Council could have used its powers to withdraw and correct the decision but failed to do so.

8. As explained in my Decision, the Council refused to grant an LDC as it considered the use of the appeal building as a dwellinghouse would constitute a contravention of the requirements of an enforcement notice currently in force. The Council then reviewed its case and issued a 'Statement of Clarification' in which it accepted that there was no notice in force at the time of the application's registration. Nonetheless, the Council's position on lawfulness did not change as it was considered the appellant had not shown that no enforcement action may be taken.

9. The Council sought to provide clarification following its initial refusal of the application. Contrary to the appellant's assertions, this shows the Council did review the case promptly when the matter was queried by the appellant. The clarification was issued on 18 July 2024, within 5 weeks of the decision. The appellant was aware of the Council's position prior to the appeal being made.

10. Moreover, it is established that appeals under s195 are treated as 'de novo' appeals and the parties may submit additional evidence to the Secretary of State. This is not a case where the Council sought to change its reasons for refusal, as suggested. The Council's actions in relation to this matter were timely and showed a correct understanding of s175(4) of the 1990 Act. There is no evidence that other statutory provisions or judicial authorities were misapplied.

11. The Council did not seek to dispute the appellant's evidence in relation to the question of immunity because this was not relevant to the matters at issue. The appeal turned on the application of s171B(4) the 'second bite' provisions, which the Council set out correctly in its clarification statement.

Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

D Moore

Inspector