Costs Decision

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by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2025

Costs application in relation to Appeal Ref: APP/A5270/X/24/3343270
107 Norwood Road, Ealing, Southall UB2 4DZ

- 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 Mrs Gurpal Kaur Sidhu of Jaujar Enterprises Ltd for a full award of costs against the Council of the London Borough of Ealing.
- The appeal was against the refusal of a certificate of lawful use or development for the conversion of the property into three self-contained flats.

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. Unreasonable behaviour can be procedural, or it can relate to the substance of the matters under consideration as part of the appeal.

3. Paragraph 049[1] of the PPG highlights the examples of unreasonable behaviour by Local Planning Authorities (LPA) where costs can be awarded. The applicant has submitted that the LPA has acted unreasonably in that there has been a lack of co-operation with the applicant. The allegation also includes the LPAs failure to assess the information submitted at the application stage, which included Council Tax banding. The applicant further contends that in refusing the Lawful Development Certificate (LDC) the LPA delayed a development that should clearly have been permitted and thus avoided an appeal.

4. I would acknowledge that it appears that the LPA failed to highlight and made little reference to the submitted information pertaining to the Council Tax banding as submitted with the LDC. However, a banding for Council Tax is by no means conclusive of how the property has been used in practice. There may be a number of reasons why the Council Tax band does not accurately reflect the actual use in planning terms. Therefore, the Council Tax banding could create significant doubt concerning whether the property has been in continuous use as three separate self-contained units for more than four years prior to the application date.

5. In terms of an LDC application, s191(4) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) states:

[1] Appeals Paragraph: 049 Reference ID: 16-049-20140306

If, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application […], they shall issue a certificate to that effect, and in any other case they shall refuse the application.

6. The burden is therefore, clearly on the applicant to provide sufficient evidence to demonstrate the lawfulness of the use sought. Otherwise, the LPA is entitled to refuse the application, as it did, in accordance with the statutory provisions outlined above. The LPA was under no obligation to negotiate or seek further information from the applicant, nor was it unreasonable for them not to do this.

7. Nevertheless, the applicant submitted further clarification in the form of records showing Council Tax bills and Housing Benefits at the appeal stage, which do not appear to have been submitted at the time of the LDC application. I have found the additional Council Tax information submitted at the appeal stage compelling and coupled with the information originally submitted with the LDC was enough to demonstrate, on the balance of probabilities, that the three self-contained flats have been continuously occupied for a period of more than 4 years.

8. Whilst I have reached an alternative conclusion to that of the LPA in respect of the LDC, without this additional information I may not have been able to reach the same overall conclusion. In this regard, I find that the LPA was not unreasonable in reaching their decision and I do not find that the applicants have been subject to wasted expense in preparing this information at the appeal stage.

9. Consequently, as I am unable to conclude that the LPA behaved unreasonably, the costs incurred by the applicant in pursuing the appeal, were the normal costs arising when the right of appeal is exercised. As parties in planning appeals and other planning proceedings normally meet their own expenses, I therefore find that unreasonable behaviour by the LPA, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated and that no award of costs is justified.

Robert Naylor

INSPECTOR