



Costs Decisions

Site visit made on 13 August 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Costs application 1 in relation to Appeal Ref: APP/T5150/C/18/3214621 Flats 1-6, Crest Road, London NW2 7SL

- 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 Mr Y Feferkorn, 120 Crest Estates, for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against an enforcement notice alleging Without planning permission, the material change of use of the premises to flats.
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Costs application 2 in relation to Appeal Ref: APP/T5150/C/18/3214621 Flats 1-6, Crest Road, London NW2 7SL

- 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 the Council of the London Borough of Brent for a full award of costs against Mr Y Feferkorn, 120 Crest Estates.
 - The appeal was against an enforcement notice alleging Without planning permission, the material change of use of the premises to flats.
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Costs Application 1

Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 047 of the PPG² advises that Local Planning Authorities are required to behave reasonably in relation to procedural matters at the appeal. An example of unreasonable behaviour would be a lack of co-operation with the other parties.
4. Paragraph 048 of the PPG³ advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by

¹ Reference ID: 16-030-20140306

² Reference ID: 16-047-20140306

³ Reference ID: 16-048-20140306

more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

5. The appellant alleges that the Council failed to co-operate by providing sufficient evidence to substantiate its case. It is evident that the Council has sought to support its case with the submission of various documents including housing benefit applications, tenancy agreements, photographs, statements of comments from tenants, and previous appeal decisions. The evidence provided has not been withheld from the appellant, who has been provided with the opportunity to comment.
6. The onus is on the appellant to prove their case on the balance of probability. Accordingly it was not incumbent on the Council to provide a standard of proof amounting to irrefutable evidence that the units were six self-contained flats at the time the notice was issued.
7. In the specific circumstances of this case my decision did not turn on the Council's site visit evidence, for the reasons set out in my main decision. However this is not to say that the Council was unable to support its case. That the appellant did not find the evidence provided a sufficient basis on which to withdraw their appeal does not mean that the Council has acted unreasonably.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Application 2

Decision

9. The application for a full award of costs is refused.

Reasons

10. Paragraph 053 of the PPG⁴ advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the appellant fails to provide adequate evidence to support their case.
11. The Council claims that the appellant's case relied on assertions, was unsupported by evidence and that the appeal was pursued with minimum effort.
12. It was not unreasonable in principle to lodge an appeal on ground (b). Whilst the appellant provided limited corroborating evidence, they were able to support the appeal with statutory declarations provided by individuals connected to the management of the property. The commitment of resources to and amount of evidence provided in support of an appeal is a matter for the appellant. Even if it could be said that more resources could have been committed and more evidence provided, this in itself does not amount to unreasonable behaviour.

⁴ Reference ID: 16-053-20140306

13. Similarly it was not unreasonable to lodge an appeal on ground (g). The appellant set out why they considered the compliance period was unsatisfactory, in relation to which the Council had the opportunity to respond.
14. The Council suggests that the appellant's position that the breach had not occurred was disingenuous, citing the receipt of housing benefit at the self-contained rate. Whilst I found that housing benefit applications based on the self-contained rate were a persuasive factor in my decision, this does not mean the appellant's case that this resulted from an error was unarguable and therefore unreasonable.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR