
Costs Decision

Site visit made on 19 November 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2020

Costs application in relation to Appeal Ref: APP/T5150/X/19/3222785 250 High Road, London NW10 2NX

- 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 Saloria Investment for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of a certificate of lawful use or development for use as 5 self-contained flats (Use Class C3) at first and second floors.
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Decision

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

Reasons

2. The Applicant seeks a full award of costs in relation to the Council's perceived unreasonable behaviour in refusing to grant a Lawful development certificate (LDC). The application has not been made with reference to the Planning Practice Guidance (PPG) which, amongst other things, deals with the award of costs at appeal. Nonetheless, I have had regard to the relevant advice in the PPG in reaching my decision.
3. The PPG advises that, irrespective of the outcome of the appeal, 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.
4. Paragraph 049¹ of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: refusing to enter into pre-application discussions, or to provide reasonably requested information, when a helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal; and not reviewing their case promptly following the lodging of an appeal as part of sensible on-going case management.
5. The Council refused the application because they considered that there was insufficient evidence to demonstrate that the five self-contained flats had been in continuous use for at least four years. In particular, the officer report advised that no evidence, such as bank statements had been provided which

¹ Paragraph: 049 Reference ID: 16-049-20140306

would demonstrate that use. However, the officer report also acknowledged that the application details indicated that bank statements had been provided but the Council had been unable to locate them.

6. I appreciate that the onus of proof in demonstrating lawfulness lies with the applicant, however it was clear from the application submission that some of the documents which were stated as being included within the application were missing. In the interests of efficiency and effectivity it is good practice for local planning authority's to positively engage in the planning application system. In this instance the Council were clearly aware that some intended documentation was missing but failed to alert the appellant to the omission. Moreover, once the appeal was lodged and those missing documents (bank statements) were included in that submission, the Council did not take that opportunity to review their case.
7. It will be seen from my decision that the information provided by the missing bank statements was crucial to my decision to grant a LDC. Had the Council engaged positively with the appellant and queried the missing documents, or reviewed their case promptly following the lodging of an appeal as part of sensible on-going case management, given the nature of this case, the appeal could almost certainly have been avoided.

Conclusion

8. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

9. 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 the Council of the London Borough of Brent shall pay to Saloria Investment, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Saloria Investment, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR