



Costs Decision

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

**Costs application in relation to Appeal Ref: APP/N5090/W/19/3243616
105 West Hendon Broadway, London NW9 7BN**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr D Azuri, Dartland Properties for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of conversion of part of the building from B1a to C3 to form 24 apartments.
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Decision

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

Reasons

2. Paragraph 30 of the government's Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Applicant submits that the Council has acted unreasonably by refusing a prior approval application as they have determined that due to the proposed alterations to the property, the development does not fall into Class O Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). As a result of this decision, the Applicant has endured unnecessary expense.
4. The Council refused the planning application on the sole ground that the works entailed to acoustically treat the building to create acceptable internal living conditions for occupiers, amounted to development that would be a material alteration to the external appearance of the building. I appreciate the outcome of the application will have been a disappointment to the Applicant. However, in the planning judgement, the Council have determined the development by following the wording within Class O Part 3 Schedule 2 of the GPDO which they have defended within their Officer Report and Statement of Case. The Local Planning Authority were not unreasonable in coming to that decision, and indeed following consideration of the application on its merits alone, I have concurred with the Council.
5. No planning condition would be appropriate to attach to a permission; these noise mitigation measures have been demonstrated on the submitted plans with the appeal. In this instance, the works would amount to material

alterations to the front elevation that goes beyond the realms of what I consider to be within the scope of the Class O Part 3 of Schedule 2 of the GPDO.

6. The Applicant has not sought permission for the noise mitigation measures to the building prior to the submission of the prior approval application and I agree with them that there is nothing set out to insist that this is a requirement to do so in advance of a prior approval submission. However, this alone does not lead me to the view that the Council have behaved unreasonably. The Applicant's reference to a lapsed permission to clad the building has no bearing on the appeal.
7. None of the types of behaviour which may give rise to a substantive award under the PPG have been established, based on the above. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Alison Scott

INSPECTOR