
Costs Decisions

Site visit made on 25 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State for Communities

Decision date: 26th October 2020

Costs applications in relation to Appeal Refs. APP/N5090/C/19/3238310 (Appeal A) and APP/N5090/X/19/3239456 (Appeal B).

29 Bertram Road, London, NW4 3PR

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is made in relation to **Appeal A** by the Council of the London Borough of Barnet for a full award of costs against Mr Manoj Patel.
 - **Application B** is made in relation to **Appeal A** by Mr Manoj Patel for a full award of costs against the Council of the London Borough of Barnet.
 - **Application C** is made in relation to **Appeal B** by Mr Manoj Patel for a full award of costs against the Council of the London Borough of Barnet.
 - **Appeal A** was against an enforcement notice alleging the change of use of the property into a C4 House in Multiple Occupation.
 - **Appeal B** was against the refusal of a certificate of lawful use or development for a change of use from C3(a) to C3(c).
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Decisions

Application A

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

Application B

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

Application C

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

Reasons

4. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs can only 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.

Application A

5. The Council's case is that the appellant was unreasonable in appealing the enforcement notice as he had previously made a retrospective planning application for the change of use of the property from a Class C3 to a Class C4 and that he provided insufficient evidence or reasoning to support his appeal.
6. However, the appeal relates to the use of the property at the time that the notice was served. The appellant did provide some evidence to support his

claim that the property was in a C3(c) use at the time that the notice was served, albeit insufficient to prove that use on a balance of probabilities as required to be successful in the appeal.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Applications B and C

8. The appellant seeks a full award of his costs in both appeals on the basis that the Council should not have served the enforcement notice (Appeal A) and should have granted the LDC (Appeal B) as the actual use of the property when the notice was issued and on the LDC application date fell within Class C3(c) rather than C4 as alleged, and was therefore lawful.
9. That argument was also the basis of the Appeal A appeal under ground (c) and in the LDC appeal. For the reasons set out in the decisions letter, I have found that argument to be unsustainable. It follows that the Council were not unreasonable in serving the notice and in refusing to grant the LDC as the applicant had not proven during the appeals, or indeed on the evidence submitted relating to the Council's investigations, on the necessary balance of probabilities that the property was a use within Class C3(c).
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Zoë Franks

INSPECTOR