
Costs Decision

Site visit made on 12 October 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Costs application in relation to Appeal Ref: APP/T5150/C/18/3214508 29 Mora Road, London NW2 6SJ

- 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 an award of costs against Mr Nabil Rassam.
 - The appeal was against an enforcement notice alleging the material change of use of the premises to an eight-bed HMO.
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Decision

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

Reasons

2. 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.
3. The Council refers to an application for a Certificate of Lawful Use or Development (LDC), which the Appellant made in April 2018, on the basis that "29 Mora Road has been used continually as a 8 Bed HMO (Sui Generis) since 1999". In July 2018 the Council refused to issue the requested LDC, and the Enforcement Notice that is the subject of the current appeal was issued in September 2018.
4. The appeal form submitted in October 2018 included an appeal on ground (d), the facts of which were summarised as "the Appellant's 6-week Hearing Statement will show that the appeal site has been continuously in use as an 8-bed HMO for more than 10 years." The Council responded to this ground of appeal, in its statement of case dated June 2020, by comparing the evidence that the Appellant had submitted in support of his 2018 LDC application with evidence contained in its own files, and listed a considerable number of discrepancies. In July 2020, as part of his response to the Council's Statement of Case, the Appellant withdrew the appeal on ground (d).
5. The Council contends that it was unreasonable of the Appellant to submit an appeal on ground (d) that was based on the "false or misleading information" he had previously submitted in support of the 2018 LDC application, and then to withdraw this ground of appeal without good reason.

6. It is contended for the Appellant that the ground (d) appeal was made on the understanding that the Council's reason for refusing the 2018 LDC application was due to insufficient evidence, rather than any conflict of evidence, and his intention then was to submit further information later in the appeal process to address the perceived insufficiencies. On receipt of the Council's Statement of Case he was made aware, for the first time, of discrepancies between the evidence he sought to rely on and information provided to the Council by tenants of the property in the context of claiming housing benefit. He consequently decided to withdraw the appeal on ground (d), as he did not wish his tenants to face interrogation about their housing benefit claims.
7. As to the various tenancy agreements and other documents submitted by the Appellant with the 2018 LDC application, the withdrawal of the ground (d) appeal has meant that none of these were submitted or tested in evidence in the context of the current appeal, so I have no sound basis for drawing any conclusions as to their veracity or otherwise. The same is true of the information provided by tenants of the property to the Council in connection with their claims for Housing Benefit.
8. I note that the Officer's Delegated Report on the 2018 LDC application does not refer to any conflict of evidence, and summarises the reason for refusal as insufficient evidence. This accords with the Appellants explanation of why he made, but then subsequently withdrew, the appeal on ground (d): if he was unaware that there was any conflicting evidence in existence, it was not unreasonable to proceed on the basis that the Council's concerns about the lack of sufficient evidence to support the LDC application could be addressed by the submission of additional evidence in support of the ground (d) appeal.
9. In short, since I am unable to reach any clear conclusion that the basis for the ground (d) appeal was wholly spurious, it has not been *demonstrated* (the test for an award of costs) that the Appellant behaved unreasonably in pleading that ground when he lodged his appeal against the enforcement notice.
10. The PPG advises that an award of costs can be made if an Appellant withdraws the appeal without good reasons, and indicates that a material change in circumstances relevant to the planning issues arising on the appeal would constitute good reason. In my judgment, the appearance in the Council's Statement of Case of evidence relating to Housing Benefit claims amounted to a material and relevant change in circumstances, and the Appellant's response of withdrawing the appeal on ground (d) at the earliest opportunity was not unreasonable.
11. The Council also contends that the appeal on ground (a) was unreasonably based on the "false premise" of compliance with planning and licensing standards and a lawful fallback position. As to compliance with planning, the Appellant has made no secret of the fact that the premises has operated for many years as an unauthorised eight-bed HMO; indeed, this admission originally formed part of his case. The Appellant's assertions concerning compliance with the HMO licensing scheme relate primarily to the 2020 HMO licence post-dating the enforcement notice, and are not inaccurate. The fallback position addressed by the Appellant was that of using the premises as a small (C4) HMO, and that would be lawful, since it is specifically provided for by the terms of the enforcement notice.

12. The Council further contends that the appeal on ground (f) was unreasonably based on resistance to the provision of a lounge. That resistance formed only a part of, not the basis for, the appeal on ground (f) but in any event, was not unreasonable: for the reasons set out in my decision on the appeal, I found the requirement to provide a first-floor lounge excessive.
13. The Council's contention that the appeal on ground (g) was unreasonably based on tenancies that cannot be trusted appears to relate to its assertion that "most, if not all, of the Appellant's tenancy agreements were fabricated for the purpose of the LDC application". However, none of those agreements were submitted as evidence in the current appeal, and the Appellant's case on ground (g) does not include any information as to the terms, notice periods or expiry dates of tenancy agreements. Failing to provide any such evidence in support of an appeal on ground (g) may arguably be unwise, but it is not unreasonable.
14. I have not seen any evidence to support the Council's allegations that the Appellant failed to co-operate with the Council in providing information and responding to a planning contravention notice (PCN): the Appellant's response to the PCN served in February 2018 is at Appendix 4 of the Council's Statement of Case, and there is no indication that any other was served. As to failing to complete a timely statement of common ground or agree factual matters, the Appellant rightly points out that the inquiry procedure timetable sets a deadline for the Statement of Common Ground of 4 weeks prior to the date of the inquiry, and that the procedure method was changed to written representations (which does not require the submission of a Statement of Common Ground) before that date was reached.
15. The Council's allegations that the Appellant has provided information that is shown to be manifestly inaccurate or untrue, and that he deliberately concealed relevant evidence at application stage or at appeal, have not (due to the withdrawal of ground (d)) been tested by the giving, and cross-examination, of the relevant evidence on oath. I am not, therefore, able to draw any reliable conclusion as to the accuracy or otherwise of these allegations. That being the case, it has not been *demonstrated* that the Appellant behaved unreasonably in the manner alleged.

Conclusion

16. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so an award of costs is not justified.

Jessica Graham

INSPECTOR