
Costs Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4th January 2021

**Costs application in relation to Appeal Ref: APP/N5660/C/20/3244515
13 Craster Road, London, SW2 2AT**

- 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 John Ioannou, New Habitat Limited for a full award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against an enforcement notice alleging unauthorised material change of use of the property from a single dwellinghouse to 11 self-contained flats.
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Decision

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

Reasons

2. Planning Practice 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.
3. The applicant argues that the Council has admitted that the breach had long since become lawful and that there was no merit in pursuing the matter, and as a result the Council was unreasonable in not investigating the matter more fully and in issuing the enforcement notice with insufficient information. The Council, in their final comments, did not state that they agreed that the breach had become lawful, rather they indicated that "there is an argument to be made" in light of the further information and evidence received, and indicated that the determination of the appeal on the evidence submitted would draw a conclusion to the issue.
4. In addition, the Council had submitted on their initial questionnaire that the case would be suitable for the written representation procedure, the request for a hearing had come from the applicant and the decision to change to the written representations procedure, following receipt of all of the evidence and representations, was taken by me (in accordance with paragraph 2.7.4 of the 'Procedural Guide – Enforcement Notice Appeals – England'). Evidence cannot be tested on oath at a hearing and the merits of the ground (d) appeal could not therefore have been investigated beyond the evidence as already submitted in writing. The Council's request for the matter to be dealt with at the final comments stage was therefore not unreasonable as it in fact reduced the expense to the parties.

5. I have dismissed the appeal on ground (d) (except in relation to Flat 8) as I did not find that the necessary period of continuous use as 11 self-contained flats had been proven by the applicant. It therefore follows that the Council's action in issuing the notice was not unreasonable, based on both the information that they had at that time, and indeed any information that has come to light subsequently. Taking into account the evidence submitted during the course of the appeal, any further investigation by the Council would not have avoided the need to serve the notice. Any costs in the appeal associated with Flat 8 alone were de minimis when considered as part of the appeal as a whole. As a result, any expense in the appeal process was not caused by the unreasonable behaviour of the Council.
6. The Council is not obliged to serve a planning contravention notice prior to the issue of an enforcement notice and a purpose of the costs regime is to encourage those involved in the appeal process to behave in a reasonable way. The decision on whether to make an application for a certificate of lawful development rested solely with the applicant, it is not necessary for the Council to invite such an application, and indeed it could have been made subsequent to the issue of the enforcement notice as the notice had not come into effect due to 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.

Zoë Frank's

INSPECTOR