



Costs Decisions

Inquiry Held on 22 and 23 June 2021

Site visit made on 13 July 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2021

Costs Application (A) in relation to Appeal Refs:

APP/T5150/C/20/3245162, APP/T5150/C/20/3245057

666 North Circular Road, Neasden, London NW2 7QJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Syed Hasan and Alhamd 1 for a partial award of costs against the Council of the London Borough of Brent.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the material change of use of the premises to flats AND Without planning permission, the erection of an extension to the rear of the premises.
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Costs Application (B) in relation to Appeal Refs:

APP/T5150/C/20/3245162, APP/T5150/C/20/3245057,

APP/T5150/C/20/3245338

666 North Circular Road, Neasden, London NW2 7QJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 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 a partial award of costs against Mr Syed Hasan, Alhamd 1 and Mrs Salma Fatima Hasan.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the material change of use of the premises to flats AND Without planning permission, the erection of an extension to the rear of the premises.
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Application (A) Decision

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

Application (B) Decision

2. The application for an award of costs is allowed in-part.

Reasons

3. The Planning Practice Guidance 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.

Application A

4. The thrust of Application A is that the Council has been aware of lettings since 2007 and the conversion of the property to flats as well as the extension since

2015. The Council then tried to misguide as well as change their case to one of continual residential use. The appellants sought to engage with the Council, and the enforcement notice should not have been issued. The appeal has caused the appellants to incur unnecessary expense.
5. Whilst I appreciate the appellants sought to engage with the Council prior to the issue of the notice, this costs regime is largely confined to the appeal process itself. Nevertheless, there was some engagement between the parties and given time limited immunity was an issue, it was not unreasonable for the Council to progress with formal action.
 6. The subsequent appeal gave the appellants the opportunity to demonstrate their case on the balance of probabilities. The use of the flats would always have had to be affirmatively established; it is not enough to evidence that they have merely existed. The Council therefore did not change its case and I am not persuaded that they sought to misguide. It was for the appellant to confirm facts as well as consequent matters such as names and identities.
 7. During the Inquiry I sought clarification from the parties that we had all seen the contents of the appellant's bundle. This arose because of the quantum of material provided by the appellants, and it then could not be established that the parties were looking at the same documents. It was therefore appropriate to adjourn to enable this to be scanned and sent. That was a matter for the appellant to resolve, not the Council, who were not untruthful in their response. I appreciate the scanning may have put some pressure on the appellants, but the length of the adjournment accorded with their request. That a witness for the appellants was then not available, is again a matter for the appellants. No timings were given for when witnesses might be called, and in the case of Ms Joy Easton, two opportunities were provided, but she was unavailable.
 8. During the Inquiry the Council queried whether one of the witnesses had a note or book that they were concealing during their live evidence. They were correct to do so, and it was immediately established that this was a closed protective case containing a mobile phone. The actions of the Council have therefore not been peculiar or unprofessional.

Application B

9. Application B is made on both procedural and substantive grounds. The procedural grounds relate to the failure of the appellants to engage with the Council in a constructive manner, there was delay in providing information with failure to adhere to deadlines, and, inaccurate information was provided. The substantive grounds are that the appellants evidence was not precise and unambiguous and the ground (c) argument could not have been applicable, based on the appellants own evidence about the occupation of the property. The Council has been put to unnecessary expense as a result.
10. Whilst Mr Hasan, who is an appellant and who also represented the other appellants, has been engaged in real estate for a number of years, he did not have a detailed or professional knowledge of the planning system. The written case of the appellant's was therefore not presented as concisely as might have been desired and did contain some irrelevant material. Whilst I accept that made preparation for the Inquiry more onerous and time consuming, given the appellants were in effect self-represented by Mr Hasan, I am minded to afford some latitude as he was clearly not experienced in such proceedings.

11. The oral evidence of Mr Hasan then clarified matters and provided precise evidence as to when certain works took place as well as the occupation of the flats, including when there was no occupancy. Whilst there might have been some confusion about a communal washing machine, middle room and office use, only a very small amount of Inquiry time was spent on these issues and they were not determinative. I do not accept that evidence was provided that was manifestly inaccurate or untrue. The Inquiry was scheduled to sit for 2 days and was not prolonged by any unreasonable behaviour on the part of the appellants. Moreover, the evidence concerning builders occupying the property and guests first staying in Flat 2 was not first raised in the appellants opening statement.
12. Whilst the appellants were self-represented, clear deadlines were given for the production and exchange of documents. There was however no Statement of Common Ground before the Inquiry and no meaningful explanation as to why the appellants could not agree basic facts with the Council, such as dates and reference numbers, have been provided. The Council took the time to produce a draft document, to little avail, and incurred unnecessary and wasted expense as result.
13. Furthermore, whilst the appellants are self-represented, for the reasons I have explained in my decision letter, the ground (c) appeal had no prospect of success. It was therefore unreasonable to persist with the case that the extension benefited from a form of permitted development and unnecessary and wasted expense was incurred as a consequence.
14. Mrs Hasan says that whilst she is the freehold owner of the property, she has no liability for the actions of others. However, she was served with a copy of the notice and then actively engaged in the process by means of lodging an appeal.

Conclusions

Application (A)

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

Application (B)

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the ground (c) appeal and in the preparation of the Statement of Common Ground.

Costs Order

17. 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 Mr Syed Hasan and/or Alhamd 1 and/or Mrs Salma Fatima Hasan shall pay to the Council of the London Borough of Brent the appeal proceedings described in the heading (B) of this decision (in respect of the costs incurred pursuant to the ground (c) appeal and in preparation of the Statement of Common Ground); such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to Mr Syed Hasan, Alhamd 1 and Mrs Salma Fatima Hasan to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul T Hocking

INSPECTOR