



Costs Decision

Hearing held on 9 June 2021

Site visit made on 10 June 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Costs application in relation to Appeal Ref: APP/M5450/C/19/3239613 Land at 51 Curzon Avenue, Stanmore HA7 2AL

- 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 R Irabor for a full award of costs against the Council of the London Borough of Harrow.
 - The hearing was in connection with an appeal against an enforcement notice alleging: Without planning permission: the material change of use of the detached outbuilding to use as a guest rental unit.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr R Irabor

2. Two written submissions have been provided and additional comments were made orally at the Hearing, which are summarised in Annex A.
3. The applicant's reply to the Council's response, given orally at the Hearing, is summarised in Annex B.

The response by the Council of the London Borough of Harrow

4. The response was made in writing and was submitted at the Hearing.

Reasons

5. 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.
6. On 13 June 2018 the Council issued a lawful development certificate (LDC) for use of the outbuilding as a non-self-contained granny annexe ancillary to the main dwelling house. The Council's report which authorised the decision to issue the LDC said:

"It has come to light that the detached outbuilding has been rented out as a private living accommodation on the website Airbnb. This could be taken to be similar to the renting of a bedroom in a dwellinghouse for Airbnb purposes. It does state on the web page that no cooking is allowed. The web page goes on to say "The suite is designed to be independent with limited interaction with host except on request. You have an independent access to the annex suite

behind the main house." The outbuilding can be accessed via the side gate in the shared driveway and then through the rear garden. No access to the main dwellinghouse would be needed and the outbuilding could be accessed independently of the dwellinghouse. However as the outbuilding would not be self-contained there would still need to be access to the main dwellinghouse for cooking purposes. As such the granny annexe is not considered to be used as separate self-contained accommodation.

A change of use as result has not occurred and the outbuilding would still be considered to be a non-self-contained granny annex which has a relationship with the main dwellinghouse at 51 Curzon Avenue."

7. Section 191(6) of the 1990 Act states that the lawfulness of any use for which a certificate is in force under this section shall be conclusively presumed. There is no evidence the use of the outbuilding has materially changed since the LDC was granted and the LDC has not been revoked.
8. So having issued an LDC for an existing use via a report that specifically acknowledged that the use included the outbuilding being rented out as private living accommodation on Airbnb, it was unreasonable behaviour to then attack this with an enforcement notice.
9. In other words, the decision to take enforcement action in this case was inconsistent with the decision to grant the LDC. For the purposes of the PPG, this is unreasonable behaviour and the enforcement notice should not have been issued in light of what was said in the Council's report for the LDC.
10. It is not sufficient for the Council to say that at the time of the LDC decision the case relating to the alleged change of use to a guest rental unit was still under investigation, as the Council had the option of refusing the LDC, pursuant to section 191(4) of the 1990 Act.
11. The Council has referred to the receipt of a previous appeal decision¹ at 12 Felbridge Avenue as a relevant material change in circumstances in this case. But that previous appeal decision concerns a different site with different facts and in any event, as I have set out in my appeal decision, the previous decision relating to No 12 does not say as the Council has said it does.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 the Council of the London Borough of Harrow shall pay to Mr R Irabor, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Harrow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

¹ APP/M5450/X/18/3210523 dated 8 August 2019

L Perkins

INSPECTOR

Annex A

"Mr Olding conceded that what he was saying was speculation. It is unreasonable to speculate. It is trite to argue there may be a breach to an independent dwelling. If there is not a breach it cannot be enforced against. Some policies referred to are not relevant or are complied with. It is not an extension. It is not a guesthouse. It is not a B&B. Arguments regarding the sequence of events are unreasonable. The Council's simple glib answer was that we had not closed the enforcement case. The LPA had granted a certificate. It is not reasonable that the council was still waiting for evidence. The decision letter triggered the enforcement notice, nothing else. It is all assertion and no more. The Council has not produced evidence that circumstances on the date of notice were different to the date of the LDC. If it is lawful it cannot suddenly become unlawful. The Council says the decision letter says something it does not. There is a mischaracterisation of use of the kitchen by guests. There is nothing unreasonable about locking an internal kitchen door in a house particularly if they have a dog. Do not give any weight to that. This is the only point that undermines the connectivity of the use."

Annex B

"Mr Olding says the advert says "independent" but it does not say that. 'Unit' is the problem which has pervaded this case. Mr Olding says he's produced evidence but all he has produced is assertions. He has cherry picked comments. He has acknowledged his speculation. The LDC was for a granny annex and not a guest rental unit. The Council knew about the Airbnb use before it granted the certificate. Persistence in arguing otherwise is adding to the unreasonable behaviour. There is nothing inaccurate in the response to the Planning Contravention Notice. The council has grasped at straws. This was a certified use. "Still investigating/awaiting appeal decision" is a ridiculous position (regarding the LDC). It had the option not to decide or refuse the LDC. The Airbnb use was found to be lawful."