



Costs Decision

Hearing held on 8 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/19/3238654 Land at 12 Felbridge Avenue, Stanmore HA7 2BH

- 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 Harrow for a partial award of costs against Mr Ehidiemen Irabor.
 - 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 the London Borough of Harrow

2. "For the development to be immune it is necessary for the appellant to demonstrate continued use for 10 years. There is no evidence to this effect. This is unreasonable behaviour given contrary evidence we hold. Section 4(1) of the notice clearly shows it is the 10 year rule that applies. It is not a residential unit that falls under the 4 year rule."

The response by Mr Ehidiemen Irabor

3. "I am advised it is a 4 year rule because it is a residential property. The 10 year rule is an afterthought by the Council. They have shifted the goalposts. There is no business for costs. Daring to respond [to an enforcement notice] is not unreasonable behaviour."

Reasons

4. 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. The Council's costs application is in respect of the ground (d) enforcement appeal only.
5. The breach of planning control alleged in the enforcement notice is a material change of use. It is not a building operation (or any other type of operation) nor is it the change of use of any building to use as a single dwellinghouse. So section 171B(3) of the 1990 Act, noted above, applies and not section 171B(1) or 171B(2). Therefore, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

6. The 10 year period is clearly and correctly stated in section 4(1) of the notice. Taking into account the above points, the appellant's case that the 4 year rule applies is without any merit and for the purposes of the PPG, the appellant's ground (d) case had no reasonable prospect of succeeding¹.
7. It makes no difference whether the outbuilding was built more than 4 years ago as the allegation attacked by the notice is not the construction of the outbuilding but its use.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

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

L Perkins

INSPECTOR

¹ Appeals - Paragraph: 053 Reference ID: 16-053-20140306