
Costs Decisions

Inquiry Held on 11, 13 and 14 May 2021

Site visit made on 14 May 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2021

Costs application in relation to Appeal A Ref: APP/T5150/C/20/3248089 45A Prout Grove, London NW10 1PU

- 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 full award of costs but failing that for a partial award of costs against Chaim Reiner on behalf of Pineview Property Ltd.
 - 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 a House in Multiple Occupation (HMO) and flats ("the unauthorised change of use).
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Costs application in relation to Appeal Ref B: APP/T5150/X/20/3245304 45A Prout Grove, London NW10 1PU

- The application is made under the Town and Country Planning Act 1990, sections 195, 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 full award of costs but failing that for a partial award of costs against Chaim Reiner.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for the "Use of property as 6 self-contained flats (Class C3).
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Decisions

1. The application for an award of costs for Appeals A and B is partly allowed in the terms set out below.

Submissions

For the Council

2. The costs application was submitted in writing at the Inquiry. The Council claims that the appellant acted unreasonably in terms of both procedural and substantive matters in dealing with these appeals.

Procedural claims

3. On procedural grounds, in summary, the Council claim that:
 - a) failed to engage with the Council or discuss the appeals;
 - b) delayed in providing information and failure to adhere to deadlines (e.g. failure to provide a statement and proofs of evidence on time and therefore, the

Council never had clear sight of the facts, or how the appellant's case relates to those facts until after the Inquiry opened); and

- c) provided information that is manifestly inaccurate or untrue (e.g. contradictory and inaccurate floor plans¹; false statements from the appellant's first agent that there was no communal cooking facility² and that 5 tenants of the appeal site will be testifying that they had cooking facilities in their rooms from the beginning of their tenancies; and falsified electrical installation certificates dated 31/10/14).

Substantive claims

4. On substantive grounds, in summary, the Council claim that:

- a) the onus is on the appellant to prove his case, and the little evidence provided, prior to the opening of the Inquiry is anything but precise and unambiguous;
- b) this appeal contradicts recent decisions relating to the same, or a very similar development in very similar circumstances, some of which he has been involved in; and
- c) the appellant has never made a case in relation to grounds (f) and (g).

For the Appellant

Summary of procedural response

- 5. The response was set out orally at the Inquiry and the application is resisted. The appellant accepts that he is liable for the actions of his agents and that prior to Mr Posen's appointment, the conduct of these appeals by his previous agent was unreasonable and that there are issues with the documents which are difficult to explain.
- 6. However, the unreasonable behaviour has not resulted directly in any wasted expense, or if it has, it is limited to the preparation of only parts of the documents submitted prior to the inquiry. Much of what the Council refer to was evidence³ which was not originally accepted by PINs and returned to the appellant, and as such, the Council were not required to deal with this.
- 7. As soon as he was instructed, Mr Posen was clear that that was not the case he was running. Major procedural unreasonableness is not the documents themselves but the absence of an explanation of the case, but that has not directly resulted in wasted expense for the following reasons:
 - 1) This case was always going to require evidence on oath and an inquiry.
 - 2) The appellant's presentation of the case at inquiry has been as clear and concise as possible.
 - 3) The vast majority of the late documents relied upon at the inquiry were all sent to the Council, a full week before the inquiry opened on 4 May 2021 and as such in the spirit of cooperation and saving Inquiry time, the Council had time to read them. Furthermore, they were not just Brent

¹ Plans submitted under LDC applications 15/1563 and 19/3185 (see Appendix 8 and 9 of Proof of Evidence, by Nigel Wicks)

² Para 4.3 of the Appellant's Statement dated May 2020, provided to PINS on 6 April 2021.

³ Appellant's Statement dated May 2020, provided to PINS on 6 April 2021, and returned to the appellant.

cases but Mr Wicks' cases. Similarly, the other documents, relied upon by the appellant in this appeal, namely the Officer's Report, should have been provided by the Council as they all related either to its own appendices or to the two decisions under appeal. i.e. the notice or the refusal of the refused Lawful Development Certificate (LDC). It is surprising that the Council said they needed time to consider these.

- 4) To the extent the inquiry has needed to sit for 3 days, that was not the result of any conduct by the appellant, but because of the uncooperative approach of the Council to the appellant getting his case in order following Mr Posen appointment.

Summary of substantive response

8. The way in which the appeal has been presented to the Inspector, during the Inquiry is not unreasonable. Evidence was called in the form of two credible witnesses, giving first-hand evidence of consistent use throughout the 4 year period. There are reasonable grounds for appeal and the appeal is necessary to get the notice in order.
9. In terms of recent appeal decisions, the appellant has not contradicted the recent *Brent* judgement⁴, but followed it. It was the appellant that explained the relevance of this judgement and not the Council. A case has been made on grounds (f) and (g).
10. Thus, there is no basis for finding that any unreasonable behaviour has caused any wasted expense. If in the alternative, there has been wasted expense, it must be limited to the preparation of documents prior to the opening of the Inquiry, and only part of those documents, given that at the Inquiry the appellant has raised a reasonable case which involves grounds both (b) and (d).

Reasons

11. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.

Procedural grounds

12. It is fair to say that the appellant, who has been involved with previous appeals on other sites, including the "Tadworth Road Appeal"⁵ referred to during the Inquiry, and the agent initially appointed, ought to be well aware of the timescales and procedures for exchanging information during the processing of an appeal, and so the delay in providing documents and the late submission of evidence at the Inquiry was unreasonable, particularly since the Council would not have been aware of the appellant's primary argument for the ground (b) appeal (that the use of the appeal site was an HMO and not a 'mixed use').

⁴ Brent LBC v Secretary of State and Reiner [2020] EWHC 3620 (Admin).

⁵ Appeal ref. APP/T5150/C/19/3241370 ("the Tadworth Road Appeal") allowed on ground (b) and the enforcement notice is quashed, on 4 November 2020.

13. Whilst a number of documents were submitted late at the opening of the Inquiry (as listed on the final page of the appeal decision), the Council would have had to respond to the material whenever it was produced. The majority of the documents, including the *Brent* judgement, and the Brent appeal decision bundle, were all sent to PINS and copied to the Council a week before the inquiry. The Council were offered the opportunity for an adjournment to consider the late evidence, if they considered this was necessary. The Council agreed to proceed with the Inquiry, without need for an adjournment. The unreasonable behaviour, on this particular point did not therefore result in any wasted expense. Furthermore, I note that the Council also submitted a number of late documents at the Inquiry.
14. In addition, owing to the nature of the matters alleged and the legal grounds of appeal lodged, these appeals were always going to require evidence on oath and thus an Inquiry. In terms of the appellant's presentation of the case at the Inquiry, that has been concise, and therefore the fact that the Inquiry lasted for three days was not due to the any unreasonable behaviour by the appellant.
15. The Council refer to inaccurate information contained within the Appellant's Statement, dated May 2020⁶. However, this late statement was not accepted by PINS, and was returned to the appellant. As such, the Council were not required to deal with this document before the Inquiry opened.
16. Furthermore, the Council would have submitted a statement of case and proofs of evidence anyway for the original grounds of appeal for the enforcement appeal (d, f, and g) and the LDC appeal, which were not withdrawn. Thus, there was no wasted expense in dealing with these grounds and the LDC appeal.
17. The Guidance advises in paragraph 52⁷ that examples of unreasonable behaviour which may result in an award of costs includes providing information that is shown to be manifestly inaccurate or untrue. Therefore, the unnecessary costs are limited to the costs of responding specifically to the falsified and inaccurate documents, namely the falsified electrical installation certificates dated 31 October 2014⁸, and the floor plans of the appeal site submitted for the refused LDC application Ref 19/3185 (Appeal B Ref APP/T5150/W/20/3245304⁹), which the appellant accepts are inaccurate. Thus, a partial award is justified.
18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Guidance, has been demonstrated and that a partial award of costs is justified for procedural unreasonableness.

Substantive grounds

19. With regards to the substantive claim, notwithstanding the submission of erroneous documents submitted before the Inquiry opened (as outlined above), it will be seen from my decision, that on the balance of probabilities, and applying the principles upheld in the *Brent* Judgement, I agree with the appellant's primary submission that there is no 'mixed use' and no 45A Prout

⁶ Submitted to PINS in an email dated 6 April 2021.

⁷ Reference ID: 16-052-20140306.

⁸ Since Domestic Electrical Installation Certificates were not produced until after 1 July 2015.

⁹ As shown within Appendix 9, of the appendices to Mr Wicks proof of evidence.

Grove is in use as an HMO. The appellant's case was supported by consistent first-hand evidence from two credible witnesses with regard to the use of the appeal site from late 2014. As such, the appellant exercised their right of appeal in a reasonable manner and that the appeal had a reasonable prospect of success. I also note that the appeal was also necessary to get the notice in order.

20. With regards to the enforcement appeal (Appeal A), it was for the appellant to consider on which grounds to appeal. For enforcement appeals, it is not uncommon for appeals on grounds (f) and (g) to be relatively brief. This is not unreasonable. This was covered within a statement entitled "Grounds of Appeal" and the appellant's opening and closings submissions. I do not therefore consider the appellant has behaved unreasonably in this regard.
21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Guidance, has not been demonstrated in respect of the claim on substantive grounds.

Costs Order

22. 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 Chaim Reiner on behalf of Pineview Property Ltd shall pay to the Council of the London Borough of Brent, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the falsified electrical installation certificates dated 31 October 2014, and the inaccurate floor plans of the appeal site submitted for the refused LDC application Ref 19/3185 (Appeal B Ref APP/T5150/W/20/3245304).
23. The Council is now invited to submit to Chaim Reiner on behalf of Pineview Property Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R Satheesan

INSPECTOR