
Costs Decision

Site visit made on 9 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Costs application in relation to Appeal Ref: APP/T5150/C/19/3243710 Land at 49 Lyon Park Avenue, Wembley HA0 4DX

- 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 Hetal Ajay Jansali for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against an enforcement notice alleging, without planning permission, the material change of use of the land to the rear of the premises to separate residential use.
-

Decision: the application is refused

Reasons

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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 Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include providing information that is shown to be manifestly inaccurate or untrue and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
2. The essence of the appellant's claim for costs is that the Council served the notice without investigating. As a result, unnecessary grounds have been added to a notice which is by law too late to be issued. The appellant would not have incurred any costs if the Council had investigated the alleged breach effectively. The Inspector will observe that the property is being used for the purpose for which it was built and that the change of use alleged has not occurred. The action of the Council has caused the appellant to take professional advice and has caused unnecessary costs.
3. The applicant's claim for costs is predicated on the belief that the breach of planning control alleged in the enforcement notice has not occurred. I have reached a different conclusion. My conclusions in that respect are based on photographs provided by the Council following a site visit made by an officer in August 2019. Those photographs and the Council officer's commentary on them were sufficient to persuade me that, on the balance of probability, the matters stated in the notice have occurred.

4. It follows that the appellant cannot reasonably claim that the Council did not investigate the breach of planning control properly. It clearly did so, and documented that investigation with a photographic record. It is true to say that the use of the outbuilding at the time of my own site visit was not the same as alleged in the notice. But, as I explain in my main Decision, the breach of planning control alleged in the notice is that found by the Council to have been taking place on the date the notice was issued. The photographic record produced by the Council demonstrated that, on the balance of probability, the matters stated in the notice have occurred. That is the relevant test. It is therefore of no relevance that the situation was different when I visited the property some 1½ years after the notice was issued.
5. The Council has not acted unreasonably by issuing the notice on the basis of the investigation that it carried out. In the absence of any unreasonable behaviour on the part of the Council, no award of costs is justified.

Paul Freer
INSPECTOR