



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: 26 August 2021

Costs application in relation to Appeal Ref: APP/T5150/C/20/3245155 Land at Flats 1-6, 56 Tadworth Road, London NW2 7UD

- 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 Brent for a full award of costs against Mr Solomon Itzinger.
 - The appeal was 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.
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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 an appellant. These examples include where the appeal or ground of appeal had no reasonable prospect of succeeding.
2. The essence of the Council's application for costs appeal is that the appeal is wholly without merit. The Council points out that appellant knows better than anyone the history of use of the appeal premises and has documented much of that history through formal submission to the Council and other agencies. The Council considers that it is unreasonable to pursue an appeal that contradicts those contemporaneous submissions. The development subject of the enforcement notice includes flats that are less than half the minimum size required by established national, regional and local development plan policies. The appellant is familiar with a number of appeal decisions dealing with similar issues, but offers no reason to depart from policy or the rationale of previous decisions. Consequently, the appeal is bound to fail.
3. The Council's application for costs was included within its Statement of Case received by the Planning Inspectorate on 16 November 2020. The Council's application for costs was, unusually, submitted before the Council had seen the appellant's evidence. Significantly, it was submitted before the judgment of the High Court in *Brent LBC v Secretary of State and Reiner* [2020] EWHC 3620 (Admin), which was handed down on 10 December 2020.

4. The *Brent* judgment was fundamental to my findings in relation to the appellant's appeal on ground (b)¹, which led to the appeal being allowed and the enforcement notice being quashed. The Council could clearly not have predicted the outcome of the *Brent* judgment or the importance of it to the outcome of this appeal. Nevertheless, given that the Council was party to that case in the High Court, it ought to have been aware that the judgment was pending. It was therefore premature of the Council to assume that the appeal had no prospect of succeeding, and to base an application for costs on that assumption.
5. The corollary of the appeal succeeding on ground (b) is that the other grounds of appeal on which the appeal was made did not fall to be considered. Those grounds of appeal included an appeal on ground (a): that planning permission ought to be granted for the matters stated in the notice. Accordingly, I had no opportunity to consider the planning merits of the use alleged in the notice, including whether the individual rooms provide an acceptable standard of living accommodation for the occupants. If I had considered the evidence on those other grounds, I may have agreed the with the position adopted by the Council. But equally I may have taken a different view. The Council's assumption that the appeal had no prospect of succeeding is therefore also unfounded in relation to those other grounds of appeal.
6. The Council is correct in that the appellant did withdraw and then subsequently resurrect his appeal on ground (d): that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In some circumstances, that might have constituted unreasonable behaviour. However, in this instance, the appellant advanced a perfectly reasonable explanation for his request to re-instate the appeal on ground (d). That explanation revolved around a review of the appellant's case after receiving the Start Letter for the appeal. The Planning Practice Guidance makes it clear that a failure to review its case on submission of an appeal can constitute unreasonable behaviour on the part of a local planning authority. I see no reason why seeking to re-instate a ground of appeal² on review of his case by an appellant should necessarily amount to unreasonable behaviour for the purposes of the Planning Practice Guidance.
7. It is obvious from the eventual outcome of the appeal that the Council was premature in assuming that the appeal had no prospect of succeeding. It follows that the appellant did not act unreasonably in submitting the appeal. In the absence of any unreasonable behaviour on the part of the appellant, an award of costs against him is not justified.

Paul Freer
INSPECTOR

¹ The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred.

² With exception of an appeal ground (a), which is time-limited through the payment of the fee.

