



Costs Decision

Site visit made on 20 October 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2021

Costs application in relation to Appeal Ref: APP/T5150/C/20/3245322 Flats 1-6, 16 Clifford Way, London NW10 1AN

- 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 N Binder.
 - 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.
-

Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council says the appellant's case that the use of the property is not as alleged is based on misleading arguments. It says that it is unreasonable to pursue an appeal that contradicts other contemporaneous submissions. By this the Council is understood to mean that the appeal representations are at odds with evidence previously presented to the Council such as housing benefit applications and valuation office registration, depicting the presence of self-contained flats.
4. The Council also says that the development includes flats that are less than half the minimum size when compared with policy requirements, without any reason being given to depart from those requirements. In the absence of any reason to depart from that policy it says the appellant's case was bound to fail.
5. I have determined this case based on the reasoning and representations before me and my site visit. Whether or not the appellant has taken a different view in the past as to the status of the accommodation, along with any actions that may have flowed from this, does not have a bearing on whether the making of the present appeal was unreasonable. Nor do the actions of individuals in relation to unrelated appeals bear on the reasonableness of the present appeal.

¹ Reference ID: 16-030-20140306

6. It is undisputed by the parties that the London Plan supports the principle of HMOs as a means of reducing pressure on other elements of the housing stock. Policy DMP 20 of the Council's Development Management Policies Document 2016 sets out that non-self-contained or self-contained residential accommodation with shared facilities will be supported subject to a range of criteria.
7. I did not need to consider the ground (a) appeal. Had I done so I may have found that self-contained accommodation was not acceptable on the basis of being deficient in scale. Notwithstanding this, the appellant set out that they were not seeking planning permission for the development as alleged, but as an HMO use only, therefore for part of the development alleged in accordance with s.177 of the Act. The appellant also referred in the appeal grounds to a fallback position of permitted development rights allowing for change of use from a dwellinghouse to a small HMO. Irrespective of their merits, there is no information to persuade me that these were not at least arguable points.
8. The fact that proposed development may be in conflict with policy does not in itself make the appeal unreasonable, and whatever I may have concluded regarding the merits of the other material considerations advanced, I am not persuaded that it can be argued that an appeal on ground (a) would have had no reasonable prospect of success. Moreover it is self-evident, because of the success on ground (b), that the appeal was not bound to fail.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR