



Costs Decisions

Inquiry Held on 16 & 17 November 2021

Site visit made on 17 November 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

**Costs Application A in relation to Appeal Ref A:
APP/T5150/C/20/3258127, Appeal Ref B: APP/T5150/X/21/3274997 &
Appeal Ref C: APP/T5150/W/21/3281345
137 Chatsworth Road, Brent, NW2 5QT**

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Saloria Investments Limited for a full award of costs against the Council of the London Borough of Brent.
- The inquiry was in connection with linked appeals against: an enforcement notice alleging erection of a two storey side and rear extension, single storey rear extension and the building in the rear garden of the premises; the refusal to grant a certificate of lawful use or development for the building works of erecting an outbuilding to the rear garden; and the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the retention of part single storey, part two storey rear extension, to storey side extension, roof extension with addition of rear dormer and one front roof light to front roof slope and two to side roof slope of dwelling house.

**Costs Application B in relation to Appeal Ref A:
APP/T5150/C/20/3258127, Appeal Ref: B APP/T5150/X/21/3274997 &
Appeal Ref C: APP/T5150/W/21/3281345
137 Chatsworth Road, Brent, NW2 5QT**

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 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 partial award of costs against Saloria Investments Limited.
- The inquiry was in connection with linked appeals against: an enforcement notice alleging erection of a two storey side and rear extension, single storey rear extension and the building in the rear garden of the premises; the refusal to grant a certificate of lawful use or development for the building works of erecting an outbuilding to the rear garden; and the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the retention of part single storey, part two storey rear extension, to storey side extension, roof extension with addition of rear dormer and one front roof light to front roof slope and two to side roof slope of dwelling house.

Decision

1. Both applications for an award of costs are refused.

2. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted costs in the appeal process.

Costs Application A

Submissions

3. The applicant's case is that the Council were unreasonable in their tone and behaviour in how they dealt with the enforcement action and had a complete misunderstanding of the law in treating the works as a single operation. In addition the Council failed to determine the section 78 application within the prescribed period and significantly changed its case during the appeal and its evidence did not reflect its written proof and only conceded that there were difficulties with the notice during the inquiry. The applicant argues that the Council's behaviour in all three appeals was wholly unreasonable and the inquiry was unnecessary which led to wasted costs, either fully if the notice was quashed or the appeal was successful, or partially based on the concessions made during the inquiry itself.
4. The Council's response is that the section 78 appeal was in relation to the same development as that covered by the notice and it was therefore evident to the appellant that it was not acceptable for the reasons set out the notice. The Council also stated that there were fine margins in terms of the planning judgement regarding the planning merits of this case so that it is not necessarily unreasonable to come to a different judgement.

Reasons

5. I have upheld the notice and the appeals failed on all grounds other than the deemed application for permission which was granted in relation to the outbuilding. Costs awards are not dependent on the outcome of the appeals but in this case the notice was upheld as there had been a clear breach of planning control and the notice was not a nullity as it was clear to the appellant what that breach was and what had to be done to rectify it.
6. Whilst some concessions were made by the Council during the inquiry regarding elements of the development this is not uncommon during the course of an appeal, and indeed one of the purposes of an inquiry is to provide such clarity and understanding. It was not only the Council who made changes to their case as it became clear during the appellant's evidence that there were some inconsistencies between the plans in relation to the flat roofed element on the side extension which had not been highlighted in the appellant's evidence to that point, and which had an effect on the outcome of the appeals (in terms of the grounds (c) and (a), the deemed application for permission and the section 78 appeal). It is clearly also possible to have differing but nevertheless reasonable views regarding the planning merits of a case.
7. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Application B

Submissions

8. The Council's Case is that appellant was unreasonable in making the ground (e) appeal and in withdrawing it so late, and in failing to provide accurate information and measurements to allow for the proper assessment of the development which prolonged and complicated the proceedings (in relation to grounds (e), (b) and (c)) and lead to unnecessary expense.
9. The appellant's response was that it was evident to the Council that the acceptance of service on the notice in the judicial review proceedings meant that the ground (e) was no longer being pursued, and that in any event, that element was such a small part of the appeal that it had not led to any additional or wasted costs. The Council had been provided with the measurements but had not accepted them and it is the Council's understanding of the relevant caselaw which is incorrect

Reasons

10. I find that it was clear that the appellant had accepted that there had been proper service of the notice in the judicial review proceedings and that any unnecessary costs associated with the ground (e) appeal were so small as to be de minimis. The lack of clarity and failure to agree the relevant measurements until the actual inquiry was down to both parties and as such was not unreasonable behaviour by one party which lead to the unnecessary costs which should be met. The measurements were agreed through the examination of the evidence and the provision of further details, photographs and plans during the inquiry which aided in my determination of the appeals. It would have been more efficient to have these measurements provided sooner but neither party was more disadvantaged than the other, and indeed the differences in opinion regarding the planning merits of the case, and the interpretation of the relevant legislation and case law were not unreasonable.
11. I therefore find that unreasonable behaviour by Saloria Investments Limited resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Zoë Frank's

INSPECTOR