
Costs Decision

Site visit made on 19 October 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Costs application in relation to Appeal Ref: APP/T5150/C/20/3245604 39 Broadfield Close, London NW2 6NR

- 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 Yoshua Mozes.
 - The appeal was against an enforcement notice alleging the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. I have determined this application in the context of the government's Planning Practice Guidance. This includes the advice 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. It is long-standing law that the burden of proof in enforcement appeals on 'legal' grounds - such as grounds (b) and (d) in this case - is firmly upon the appellant, and on the balance of probabilities.
4. The appellant has put in sparse evidence as to the way in which the property has been used since conversion works were carried out in 2016. This consists of little more than Statutory Declarations from two tenants and a tenancy agreement. He claims the use all along has been as a Class C4 HMO, that the alleged change of use has not occurred as a matter of fact, and that the alleged development did not require planning permission.
5. However, the Statutory Declarations do little more than state the tenants' circumstances, the prohibition of cooking within rooms set out by the managing landlords - which they had followed - and their belief that other tenants had followed the same pattern of occupation. These documents by no means present a comprehensive account of use of the premises.
6. The appellant also sets out at great length his understanding of the meanings of the words 'dwellinghouses' and 'flats' and submits numerous appeal decisions and references to court cases. However, there is virtually nothing to counter the Council's evidence on the use of at least one of the units as a self-contained flat, and the supporting evidence concerning the appellant's

intentions as evidenced by the registration of the units as flats, and references to 'Flats' in tenancy agreements.

7. Lengthy arguments have been put forward about the nature of cooking facilities, and the difference between HMOs and flats. However, there is a failure to address the substantive issue of the occupation of at least one unit as a flat.
8. On the legal grounds I consider his evidence is so sparse that it fails to attain the relatively low bar of being precise and unambiguous, and he fell far short of discharging his burden of proof. Despite being professionally advised, the appellant continues the thread of claimed original HMO use into his arguments on grounds (a) and (f).
9. The appeal on ground (a) and the deemed planning application are based largely upon the contention that the use as a HMO was lawful, and even if there had been an intervening use as a flat or flats, there was a right to revert to HMO use as a part of the allegation. However, this again begs the question as to whether there was ever a Class C4 use. This is as unsupported on ground (a) as it was in the legal grounds.
10. Furthermore, no relevant specific references have been made to development plan policy or national planning guidance. Nor are any material considerations put forward to justify non-conformity with the development plan.
11. The ground (f) appeal was on the basis that it would only be necessary to put the premises into HMO use in order to remedy the breach of planning control. But this again presupposes that HMO use was the previous lawful use, whereas I have found the appellant's evidence falls short of being adequately precise and unambiguous to demonstrate that.
12. I also understand the appellant failed to appear at an accompanied site visit arranged by the Inspectorate for 8 December 2020, causing the Council unnecessary expense in attending the site and travelling to and fro. The appellant has not commented on this, but I have no reason to consider it not to be the case and adds to the other factors of unreasonable behaviour.
13. In my opinion all the above factors demonstrate unreasonable behaviour that caused the Council unnecessary work in defending their case with resultant unnecessary or wasted expense.
14. On ground (g), the appellant puts forward a reasonable argument about the length of time that might be required to evict existing tenants. On this ground I do not find there was unreasonable behaviour that led to unnecessary or wasted expense in the appeal process.

Conclusions

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. The application for an award of costs is allowed in the terms set out below.
17. In exercise of my 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, I HEREBY ORDER that Yoshua Mozes shall pay to the London Borough of Brent Council, the costs of the appeal proceedings described in the heading of this decision insofar as they relate to the appeals on grounds (a), (b), (c) and (f), and to the aborted site visit; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Yoshua Mozes, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Brown

INSPECTOR