The Planning Inspectorate

Costs Decision

Site visit made on 27 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2021

Costs application in relation to Appeal Ref: APP/G5180/C/21/3273642
Land at 129 Croydon Road, Beckenham BR3 3RA

- 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 Francesco Iannelli for a full award of costs against London Borough of Bromley.
- The appeal was against an enforcement notice alleging the change of use from a newsagent to a coffee shop, deli and bar.

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) 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. In his appeal statement the applicant sets out in full his application for costs. In this he refers to an application for a lawful development certificate for an existing use of the appeal site (application reference 21/00392/ELUD). It is suggested that the Council has failed to determine the application and has instead issued the enforcement notice that is the subject of his appeal. He says that this has resulted in wasted time and financial loss.

4. The Council's response does not refer to the above-mentioned lawful development certificate. Instead it has referred to the planning application, reference 20/00104/FULL1, for a proposed use of the site. The Council says that this application was determined before the enforcement notice was issued and that an appeal against the Council's decision on this application could have been made.

5. Whilst I note the parties' reference to recent applications for the site, neither of those matters are before me. Accordingly, that the Council had not issued a decision in respect of the lawful development certificate does not mean that it has behaved unreasonably in respect of the appeal relating to the enforcement notice issued.

6. Section 172(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act) states that a local planning authority may issue a notice where it appears to them that there has been a breach of planning control; and that it is

expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council is entitled to exercise its powers under these provisions. Furthermore, the notice identifies a breach of planning control and states why it appears to the Council that it is expedient to issue the enforcement notice. In this regard, I am satisfied that its issue complies with section 172(1)(a) and (b) of the 1990 Act.

7. I note the guidance at paragraph 049 of the PPG, and that it gives an example of the type of behaviour giving rise to a substantive award of costs against a local planning authority as being where it has prevented or delayed development which should clearly be permitted. Whilst I have found in the applicant's favour in this appeal, the Council's response to the grounds of appeal is robust. It was not, therefore, clear from the outset that the enforcement notice prevented development that should have been allowed to carry on; that the development in this case had not occurred or that it did not constitute a breach of planning control. Accordingly, I do not find that the Council has acted unreasonably in issuing an enforcement notice, despite the allegation that at that time it had not determined a certificate of lawfulness for the site.

8. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR