

Costs Decision

Site inspection on 23 March 2020

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Costs application by Mr Jack Grunhut made in connection with appeal ref: APP/N5090/C/21/3286370 No. 15 Tenderden Drive, London NW4 1EA

- The application was 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 was made by Mr Jack Grunhut for a full award of costs against the London Borough of Barnet Council.
 - An appeal was made by Mr Jack Grunhut against an enforcement notice issued by the Council alleging the making of a material change of use of the garage/side extension at No. 15 Tenderden Drive to use as an office with associated storage.
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Decision

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

Submissions made by Mr Jack Grunhut

2. The Applicant, Mr Grunhut, said the Council had acted unreasonably. The Council served an enforcement notice despite the lack of evidence that a breach of planning control had occurred. It was based upon no more than a hunch that the property was not only being used as a home office but was also used by employees of the business other than the occupiers of the house. The Council's planning enforcement officer ignored the Appellant's response to the planning contravention notice and subsequent e-mails, which clearly stated that no staff worked in the offices. No evidence that Council officers or a complainant had witnessed employees other than the occupiers of the house, (husband and wife), working at the property. No evidence that the property was being used as a commercial office was produced. But the Council still proceeded to serve an enforcement notice.
3. The actions of the Council therefore amounted to unreasonable behaviour. It was an abuse of process.

Submissions made by the London Borough of Barnet Council

4. The Appellant was arguing that their responses to the Planning Contravention Notice were sufficient to answer the question regarding the use of the office. However, the Council's site visit to the office led to a different interpretation of the facts provided by the householder. It was that interpretation of the 'office' which resulted in the enforcement notice being issued.
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5. The appeal process does not place the burden of evidence upon the Council but rather it is for the appellant to prove that 'on balance' their evidence/description is more valid than that of the Council.

Inspector's conclusions

6. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The Council's enforcement notice was appealed, amongst others, on ground (c) – that no breach of planning control had occurred. That appeal was pertinently if not persuasively addressed. In my view, nothing in the issue of enforcement notice and the manner in which the appeal was dealt with by either side produced any unreasonable behaviour which warranted an award of costs.
8. If any unnecessary or wasted expense was incurred it was not as a result of any unjustified actions by the Council. The enforcement notice was issued following the Council's assessment that there had been an unacceptable breach of planning control. Indeed, I found there had been a breach of planning control.
9. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. In my view, that was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against the Council is not justified.

COSTS ORDER

10. No order as to costs is made.

John Whalley

Inspector