The Planning Inspectorate

Costs Decision

Site visit made on 15 March 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 18th May 2022

Costs application in relation to Appeal Ref: APP/T5150/X/21/3267930
238 High Street, London NW10 4TD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Tim Offer of the Offer Group Ltd for a full award of costs against the Council of the London Borough of Brent.
- The appeal was against the refusal of a certificate of lawful use or development for Use as four self contained flats (Use Class C3)

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The Appellant seeks a full award of costs; his claim is based on two points.

4. The first relates to the Council's behaviour at the application stage. He says that the Council failed to work proactively with him, in the manner set out in the Government's Planning Practice Guidance (PPG). The Council made no effort to contact him between the validation of the application and the date the decision was issued. Had it engaged with him, some of the gaps in the evidence that had been identified could have been addressed. He particularly cites his lack of access to Council Tax records that, had the Council looked into them, would have helped lead to a different decision.

5. The second point made is that the Council was inconsistent in its assessment of the submitted statutory declarations. Furthermore, its assessment of the weight to be attributed to them was wrong.

6. Its approach on both counts amounted to unreasonable behaviour, as set out in the PPG[1].

7. In response to the first point, the Council says there is no statutory requirement to accept amendments or request additional information. I am told that its allocation letter set out the approach that the Council would take in the assessment of the application. I have not been given a copy of the letter, but I

[1] Paragraph: 049 Reference ID: 16-049-20140306

am told that it includes the words [the Council] "aims to make a prompt decision on your case as submitted". Finally, it says that the onus lies with the Appellant to prove his case.

8. The Council goes on to acknowledge the importance of statutory declarations. It states that there is an expectation that supplementary documents are submitted with them to corroborate their content. This would ensure that there is no contradictory evidence to cast doubt on the claims.

9. On the basis of the evidence before it, the Council found that the statutory declarations on their own did not sufficiently account for gaps across the four years. Its reasoning on the matter was clearly set out when the Officer's report is read as a whole.

10. In conclusion, it did not act unreasonably and costs should not be awarded.

11. There is no statutory requirement to request further information, a point that the Appellant concedes. The PPG[2] sets out that a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. However, the point is made in this paragraph that the applicant is responsible for providing sufficient information to support an application.

12. I have not been provided with any request made by the Appellant in respect of Council Tax records. Whilst these may have been made, the emphasis is nonetheless on the applicant to provide sufficient evidence. He did supply some evidence in this regard at the appeal stage. However, I found that this was insufficient to prove the case. In any event, whilst they might provide some assistance, I have not been persuaded that further information in this regard would have led to a different decision. Council Tax records might show that the tax has been paid, but they do not demonstrate the use of the flats which was the issue in the application and appeal.

13. In respect of the first point in the claim, whilst the Council might have provided assistance, its actions were not unreasonable.

14. Statutory declarations, by their very nature, attract greater weight than unsworn letters or written statements. However, if a statutory declaration provides evidence that is imprecise or ambiguous, or is contradicted elsewhere, then the weight to be attributed to it would be diminished.

15. Additional evidence to corroborate what is said in a statutory declaration can be of great use to both Councils and applicants. Whilst the Council might expect such evidence to be provided, it is not automatically required. Established case law[3] sets out that an Appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

16. It seems that the Council did not follow this approach. This was particularly important with regards to the assessment of the evidence for Flat A2. The signatory for the statutory declaration in that case stated that he had occupied,

[2] Paragraph: 005 Reference ID: 17c-005-20140306
[3] *Gabbitas v SSE & Newham LBC* [1985] JPL 630

(which it is reasonable to read as used), Flat A2 as his only residence since 2014.

17. I agree with the Council that supporting evidence might have helped both parties, but there was no requirement for this. I find the Council's expectation in this respect to be wrong. If the declaration had been imprecise, without supporting evidence it could have been held to be insufficient to prove the case. In the case of Flat A2, the little that was written was sufficiently precise and unambiguous. Following the lead from *Gabbitas*, as the Council had no evidence of its own to counter the claim it should have been accepted. That it was not amounted to unreasonable behaviour which led to unnecessary costs of having to produce a case for Flat A2.

18. This was not the case with the statutory declaration for Flat B2, however. In that case, the evidence given in it was not precise and unambiguous. Therefore, the Council was right to find that additional information was required to corroborate its assertions.

19. 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, in respect of Flat A2, is justified.

Costs Order

20. In exercise of the 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, IT IS HEREBY ORDERED that the Council of the London Borough of Brent shall pay to Mr Tim Offer, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Curnow

Inspector