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## Costs Decision

Site visit made on 9 May 2022

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 May 2022**

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### **Costs application in relation to Appeal Ref: APP/A5270/C/20/3263312 Land at 76 Horsenden Lane South, Perivale, Middlesex UB6 8AE**

- 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 Ealing for a full award of costs against Mr Suadad Sumaiaie.
  - The appeal was against an enforcement notice alleging: Without planning permission, the material change of use of the premises to ten self-contained flats.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance 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 Local Planning Authority submit that the appellant has acted unreasonably in relation to the lack of substantive evidence to support his appeal. In particular, submitting documents which were outside of the relevant time period and only one document seeking to demonstrate occupancy of one of the flats. The appellant was professionally represented, and it is clear from the evidence submitted that the appeal had no reasonable prospect of success. The Council has had to defend a case which it was unreasonable to lodge and a full award of costs is sought in relation to the planning and administrative costs incurred in defending the appeal.
4. The PPG advises that an appellant is at risk of a substantive award being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. For example, in enforcement appeals, the onus of proof on matters of fact is on the appellant.<sup>1</sup>
5. In this case the appeal was brought on ground (d), that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is on the appellant to prove his case on the balance of probability.
6. The appellant did support his case with some documentary evidence. However, with the exception of just one uncorroborated letter from a former tenant, the

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<sup>1</sup> PPG Paragraph: 053 Reference ID: 16-053-20140306

documents submitted were either after the relevant date of September 2016 or did not provide any evidence of occupation. No tenancy agreements, evidence of rent payment have been provided, instead the appellant appears to have relied on the Council's inspection of the premises in March 2018 where they believe it was clear the property had been converted into 10 self-contained flats. That inspection did not provide proof of use or occupation and the Council's own evidence in relation to use as a hotel was not substantially refuted or explained.

7. The PPG makes it clear that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. From the evidence before me, and in the absence of any substantive evidence from the appellant in relation to use/occupation to support his case, it was unreasonable of the appellant to exercise the right of appeal on the ground submitted when it clearly had no reasonable prospect of succeeding.
8. For the above reason, I find that unreasonable behaviour by the appellant, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

9. 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 Mr Suadad Sumaidaie shall pay to the Council of the London Borough of Ealing, 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.
10. The applicant is now invited to submit to Mr Suadad Sumaidaie, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Elizabeth Pleasant*

INSPECTOR