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## Costs Decision

Site visit made on 14 March 2022

**by Roy Curnow MA BSc(Hons) CMS MRTPI**

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

**Decision date: 08<sup>th</sup> June 2022**

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### **Costs application in relation to Appeal Ref: APP/T5150/C/20/3245156 650 North Circular Road, London NW2 7QJ**

- 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 Richard Lewis for a full award of costs against the Council of the London Borough of Brent.
  - The appeal was against an enforcement notice alleging a material change of use of the property to a house in multiple occupation and flats; and the erection of a single storey rear extension.
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### **Decision**

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

### **Reasons**

2. The start point in planning appeals is that the parties will normally meet their own expenses. Costs will normally be awarded where the following conditions have been met: a party has made a timely application for an award of costs; the party against whom the award is sought has behaved unreasonably; and the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Appellant made his costs application in paragraph 18 of his Final Comments. The relevant part of this paragraph is "The LPA are clearly trying every avenue to confuse the appeal process. The appellant makes a full cost application".
4. At the beginning of that paragraph, the Appellant refers to the Council's reference to an earlier enforcement notice requiring the removal of a dwelling from the property's rear garden. The Council's response to the costs application is based solely on this matter. However, given that the application is for a full award and that the Appellant refers to "every avenue", I have taken the application to be based on more than just that matter. I take this to be an application made on the basis of the Council's actions in issuing the Notice and its submissions in support of its position.
5. Starting with the matter of the earlier notice, the Council says in its costs response that it was merely drawing attention to the matter and this is not unreasonable. I am unclear why the Council refers to there being no evidence of use of the appeal premises as a single dwellinghouse since the Appellant's purchase, in paragraph 4.10 of its statement and in its costs response. From the Inspector's decision letter for the appeal against that Notice, it seems that there was no requirement for this. Notwithstanding this, I simply see

paragraphs 2.4 and 4.10 of the Council's statement as being informative of past events. Furthermore, the Appellant has not demonstrated that this led to unnecessary work and wasted expense.

6. The Council's enforcement action was based on an inspection of part of the premises at No 650 and the content of various documents, including Council Tax records, an application for housing benefit made for an occupant of No 650 and EPCs that had been sought by the property's owner.
7. At its site inspection, the Council saw a small kitchen area that included a fridge, worktop, cupboards and microwave in a room. Its view, when allied to the documentation I refer to, led it to conclude that there had been a material change of use of the property to a HMO and flats.
8. Whilst it was difficult to see how the Council had determined there to be two flats in the property, it was possible for an argument to be made that one had been formed. In this regard, the Council demonstrated how it thought what was alleged in the Notice had occurred. The Council also provided a number of appeal decisions in support of its position. For his part, the Appellant supplied appeal decisions that reached differing conclusions.
9. Taken as a whole, the submitted appeal decisions demonstrated that each decision had to be made on the individual merits of the cases. To my mind, the situation changed with the Court's decision in *Brent London Borough Council v (1) Secretary of State for Housing, Communities & Local Government (2) Chaim Reiner* [2020] EWHC 3620 (Admin). This clarified the matters at hand in the appeal and provided a framework for assessing development of the type alleged in the Notice. There is still, however, a need to assess each case on its individual merits.
10. The Court's decision was handed down on 10 December 2020. This was a full year after the Council had issued its Notice, so it had not then been in a position to benefit from the Court's findings. Save for arguing that the Council had tried every avenue to confuse the appeal process, the Appellant did not draw my attention to any example of this, nor how there was unreasonable behaviour that led to wasted or unnecessary expense.
11. Although I disagreed with its position in my decision in the ground (b) appeal and quashed the Notice, I did not find that the arguments it put forward in respect of this and the other grounds were so ill-founded as to amount to unreasonable behaviour.
12. For the above reasons, the claim for costs fails.

*Roy Curnow*

Inspector