
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: 13 July 2022

Costs application in relation to Appeal Ref: APP/T5150/C/20/3245608 645 and Flats 1-5, 645A North Circular Road, London NW2 7AY

- 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 Chaim Reiner for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against an enforcement notice alleging the material change of use to a house in multiple occupancy and flats
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Decision

1. The applications for awards of costs are allowed in the terms set out below.

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 23 of his Final Comments. It says "All evidence, including those provided by the LPA demonstrate use as two flats. The LPA are making an unreasonable case and a cost application is made". He clarifies in his response to the Council's comments on the costs application that this is an application for full costs.
4. The Council's paragraph 4.12 was made in respect of the Ground (f) appeal, and states "The appellant asserts the previous lawful use is as two flats, but he has produced no evidence of this. The Council concedes that Steps 2 and 3 at Schedule 4 of the notice are excessive and should be deleted".
5. Before moving to an assessment of the arguments related to the use alleged in the Notice, it was necessary to establish the relevant planning unit or units in the building. The Council is right in stating that the use of the appeal premises, by which it means the whole building, includes its historic use as a shop and residential. It determined that this was as a single planning unit.
6. I found that, in parts, both parties' submissions did not clearly explain their positions. I agree with the Council that the Appellant's reference to two flats in its Ground (f) case in the appeal form was not adequately followed up, and the Council's reaction to this is understandable. However, on the matter of the planning unit, I note that the skeleton case in the appeal form, on the Ground

- (b) appeal, did clearly state the Appellant's position that there were two planning units. This was his consistent position in his later submissions. Whilst the Appellant suggested that these two units were always separate, he was unable to demonstrate this to be the case.
7. The Council's Officers could not access the ground and basement levels at their site visit and surmised that they could only be accessed from the front. This should have alerted them to the prospect that there might be more than one planning unit. Subsequent assessment of the various application drawings that have been brought forward in this appeal should have made it apparent that there were two separate and lawful planning units. These, the evidence shows, had been established for some considerable time. Given the overriding evidence showing that there were two units in the building, the Council's failure to identify the situation was unreasonable.
 8. Having not identified the two planning units, the Council's requirement to cease the building's occupation by more than one household was flawed. This did not render the Notice a nullity, nor a nullity, as the error was correctable without prejudicing either party. However, the Council's position did lead to the Appellant incurring unnecessary expense.
 9. The Council's position in respect of use was based on an inspection of No 645A and the content of various documents, including Council Tax records, an application for housing benefit made for an occupant and an EPC that had been sought by the property's owner. The evidence of what was seen at the site inspection that led to the Council concluding that there was a mixed use of HMO and self-contained flats is scant. It is largely restricted to a photograph on page 110 of its SoC. This shows a small kitchen area that included a fridge, worktop, kettle, cupboards and microwave in a room. This led it to conclude that there had been a material change of use of the property to a HMO and flats.
 10. Notwithstanding the small amount of evidence, the Council demonstrated how it thought what was alleged in the Notice had occurred in a reasonable manner. 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. Taken as a whole, the submitted appeal decisions demonstrated that each decision had to be made on the individual merits of the cases.
 11. To my mind, the situation changed considerably 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 raised in the appeal and provided a framework for assessing development of the type alleged in the Notice.
 12. 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. In the circumstances, I find its position in respect of the allegation of use to have been reasonable.
 13. My conclusion is that an award of full costs is not warranted. However, the Council's actions in concluding that there was a single planning unit was unreasonable behaviour that led to unnecessary expense in preparing

arguments to show that this was not the case. A partial award of costs on this basis is warranted.

Costs Order

14. 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 for the London Borough of Brent shall pay to Mr Chaim Reiner, partial 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.
15. Mr Chaim Reiner is now invited to submit to the Council for the London Borough of Brent, to whom a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Curnow

INSPECTOR