
Costs Decision

Site visit made on 1 August 2022

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 August 2022

Costs application in relation to Appeal Ref: APP/N5090/C/21/3268922 16 & 18 Brampton Grove, London, NW4 4AG

- 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 Jeremy Stakol for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging the construction of netting surrounding a hardstanding with associated supporting poles and lights.
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Decision

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

Reasons

2. The appellant first points to the failure of the Council to serve a copy of the enforcement notice in accordance with the terms of the Act, a matter disputed by the Council. However, in my decision letter, I noted that I did not need to resolve the competing claims as to the proper service of the notice because of the provisions of S.176(5) of the Act, having found no substantial prejudice to the appellant.
3. The appellant goes on to point to a lack of communication by the Council or any attempt to discuss the development or the length of time it had been in place. It is submitted that the enforcement notice is inaccurate and that the Council's evidence to support its case is lacking in substance.
4. In response, the Council accepts that the address is inaccurate, albeit a matter that can be corrected. It relies on the Google Earth image as evidence of the date of the development and on the onus on the appellant to substantiate his case on ground (d).
5. 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.
6. The PPG goes on to advise that, for enforcement action, local planning authorities (LPA) must carry out adequate prior investigation. A crucial first step is to attempt to contact the owner of the site. LPAs are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensure that it was accurate.

7. The Council has given no indication of what steps it took to investigate the alleged breach and has not disputed the appellant's claim of lack of communication. I have not seen evidence of the service of a Planning Contravention Notice, a step which is normally advised prior to formal enforcement action. The erroneous reference to no.18 Brampton Grove could easily have been avoided by proper investigation. Albeit this was a point that I was able to correct, it still needed to be addressed by the appellant.
8. It appears to me that, had the appellant been given the chance to demonstrate when the first 8 poles and the netting were erected, the evidence would have pointed to their having been in place for more than 4 years. The Council's complete reliance on a small scale Google Earth image to depict a development of this type appears a very limited basis for enforcement action.
9. On balance, it appears that the Council's prior investigation was inadequate, leading to an incorrect address and plan in the notice and the failure to justify the issue of a notice in respect of the original 8 poles and the netting.
10. The appellant accepts that 2 of the poles and the lighting were erected in 2019. These were therefore liable to enforcement action, had the Council found it to be expedient; that is not a matter for my judgement. For this reason, a full award of costs would not be appropriate.
11. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs, applying only to the original 8 poles and the netting, is justified.

Costs Order

12. 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 Barnet shall pay to Mr Jeremy Stakol the costs of the appeal proceedings described in the heading of this decision, limited to the costs of addressing the erection of the original 8 poles and the netting; such costs to be assessed in the Senior Courts Cost Office if not agreed.
13. The applicant is now invited to submit to the Council of the London Borough of Barnet, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B.S. Rogers

Inspector