

Costs Decision

Site inspection on 4 August 2022

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Costs application by Mr P Singh made in connection with appeal ref: APP/E5900/C/22/3292210. 110 Whitechapel Road, London E1 1JE

- The application was 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 was made by Mr P Singh for a full award of costs against the London Borough of Tower Hamlets Council.
 - An appeal was made by Mr P Singh against an enforcement notice issued by the Council alleging the making of a material change of use of the first, second, and third floor of the premises from storage to a 6-room House in Multiple Occupation.
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Decision

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

Submissions made by Mr P Singh

2. The Applicant, Mr P Singh, said the Council had acted unreasonably. They served an enforcement notice despite the lack of evidence that a change of use of the premises as alleged had occurred.
3. The actions of the Council therefore amounted to unreasonable behaviour. It was an abuse of process.

Submissions made by the London Borough of Tower Hamlets Council

4. The Council said the enforcement notice was issued correctly. A breach of planning control had occurred in that works were carried out to the property for its use as a House in Multiple Occupation, (HMO). The works took place without planning permission after the Council had introduced an Article 4 Direction for the control of uses as HMOs for any number of households.

Inspector's conclusions

5. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
 6. The Council's enforcement notice was appealed on ground (b) – that no breach of planning control had occurred.
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7. The enforcement notice alleged the making of a material change of use of the first, second, and third floor of the premises from storage to a 6-room HMO. However, although recent renovation works on those floors appeared to the Council to have been made in preparation for occupation as an HMO, such use had not started before the enforcement notice was issued. S174(2)(b) of the Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the enforcement notice. In this instance, the Council's notice anticipated the start of an HMO use.
8. I found that a change of use of the appeal premises as alleged in the enforcement notice had not taken place. There was no evidence of a breach of planning control to use as an HMO having occurred or started before the enforcement notice was issued.
9. An application for costs needs to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In my view, that was done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was demonstrated. An award of costs against the Council is justified.

COSTS ORDER

10. 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 London Borough of Tower Hamlets Council shall pay to Mr P Singh the costs of the appeal proceedings described in the heading of this decision.
11. Mr P Singh is now invited to submit to the London Borough of Tower Hamlets Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

John Whalley

Inspector