

Costs Decision

Site inspection on 3 August 2022

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Costs application by the London Borough of Brent Council made in connection with appeal ref: APP/T5150/C/21/3288217 – No. 37 Uxendon Crescent, Wembley HA9 9TW

- 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 the London Borough of Brent Council for a full award of costs against Ms Vanita Patel.
 - The appeal was made by Ms Vanita Patel against an enforcement notice issued by the London Borough of Brent Council alleging the material change of use of the premises to two flats at No. 37 Uxendon Crescent, Wembley HA9 9TW.
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Decision

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

Submissions made by the London Borough of Brent Council

2. The Council's application was for a full award on procedural and substantive grounds. On procedure, the Appellant Ms Patel failed to engage with the Council in a constructive manner; delayed in providing information and provided inaccurate or untrue information. On substantive matters, the burden was on the Appellant to provide precise and unambiguous evidence. That was not done. Her case was based on false documents and misleading assertions.
 3. The Appellant, together with Deepa Kanji Jesani and Mr Kanji Jasani was part of a coalition to develop the appeal premises that had been engaged in real estate activities at the appeal premises and elsewhere for many years. The premises had been the subject of enforcement investigation since 2013. The Appellant had been represented by professional agents throughout.
 4. The Notice was preceded by a planning contravention notice and a lawful development certificate application during which the Council expressed its concern at the lack of clarity in the Appellant's evidence.
 5. Evidence for this appeal demonstrated complicity in the housing benefit 'mismatch' by submitting evidence of ongoing payments to a tenant at twice the rate of their purported tenancy agreement. Ms Patel compounded her misrepresentation of the water supply by submitting further bills; submitted a further council tax bill for a single dwellinghouse; submitted unhelpful tv licences; submitted gas safety records evidencing the landlords as Kanji Jesani or his company KK Properties Ltd (the landlord evidenced in the Housing benefit
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tenancy was not the landlord evidenced in the Appellant's tenancies); submitted an unhelpful bank statement; submitted an unhelpful letter from Legal and General addressed to the single dwellinghouse overwritten in manuscript "G floor flat"; submitted a fuel bill stating that the tenants of a ground floor flat moved in 3 years after the Appellant said they did; submitted HMRC letters addressed to the single dwellinghouse overwritten in manuscript "G floor flat".

6. The Appellant had behaved unreasonably in making the appeal and in her conduct of it. The Council had been put to unnecessary expense as a result. They should have their costs.

Ms Vanita Patel

7. Ms Vanita Patel did not respond to the Council's application.

Inspector's conclusions

8. 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.
9. In my view, the Appellant's case in support of her appeal against the enforcement notice was not merely misdirected and unpersuasive, it was blemished by misleading and apparently deceptive evidence, especially in relation to housing benefit support. Ms Patel's appeal case led the Council to waste time in having to investigate conflicting and irrelevant supporting evidence. The Council's costs claim assertions were not disputed.
10. An application for costs needs to clearly demonstrate how any alleged 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 Appellant, Ms Vanita Patel, is justified.

COSTS ORDER

11. 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 Ms Vanita Patel shall pay to the London Borough of Brent Council the costs of the appeal proceedings described in the heading of this decision.
12. The London Borough of Brent Council is now invited to submit to Ms Vanita Patel, 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