



Costs Decisions

Site visit made on 24 May 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 Sep 2022

Appeal A:

**Costs application in relation to Appeal Ref: APP/T5150/W/21/3277253
6-10 Hallmark Trading Centre, Fourth Way, Wembley HA9 0LB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Dharmesh Amin of NHMD Properties LLP for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (the Act) for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
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Appeal B:

**Costs application in relation to Appeal Ref: APP/T5150/W/21/3283097
6-10 Hallmark Trading Centre, Fourth Way, Wembley HA9 0LB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Dharmesh Amin of NHMD Properties LLP for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for retrospective approval for changes to front and rear elevation fenestration and installation of cycle store to rear of the building.
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Decision

1. In respect of Appeal A, the application for an award of costs is refused.
2. In respect of Appeal B, the application for an award of costs is partially allowed in the terms set out below.

Reasons

3. The Planning Practice Guidance (the Guidance) 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.
4. The appellant refers to the grounds for refusal of the Council being ungrounded and unreasonable. However, in respect of Appeal A, I have agreed with the Council that the proposal would not comply with the provisions of Section 73 of the Act. I therefore cannot agree that the Council has behaved unreasonably in that regard.

5. However, in respect of Appeal B, I have concluded that the proposal could be carried out on its own terms independently of any change of use. Even given the complex history of the appeal site and any works that may have been undertaken, the Council has not provided substantive evidence to support its stance in respect of this appeal. The explanation given by the Council as to why it cannot proceed to give consideration to the application included generalised assertions about the status of the proposal which are unsupported by objective analysis of the evidence before me. This has delayed development which should clearly be permitted, having regard to its accordance with national policy and any other material considerations.
6. The appellant also refers to loss of revenue as they have been unable to use the building for its intended purpose. However, the Guidance makes it clear that costs awards cannot extend to compensation for indirect losses, such as those which may result from a delay in obtaining planning permission. I therefore consider that an award of costs with respect to this element of the appellant's application is unwarranted.
7. Notwithstanding my conclusions in relation to Appeal A as well as loss of revenue, I conclude that in respect of Appeal B the Council has behaved unreasonably, with the result that the applicants have directly incurred unnecessary and wasted expense in submitting their appeal. Having regard to the provisions of the Guidance, a partial award of costs in respect of Appeal B is therefore justified.

Costs Order

8. 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, in respect of Appeal B, the Council of the London Borough of Brent shall pay to Mr Dharmesh Amin of NHMD Properties LLP, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in making that appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The appellant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cross

INSPECTOR