
Costs Decision

Site visit made on 22 November 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2023

Costs application in relation to Appeal Ref: APP/T5150/C/22/3293655 6 Logan Road, Wembley, HA9 8PX

- The application is made under the Town and Country Planning Act 1990 ("the Act"), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Brent for a full award of costs against Mr Marius Solovastru.
 - The appeal was against an enforcement notice alleging the material change of use of the premises to a House in Multiple Occupation (HMO) and flats and the erection of a single storey extension and canopy extension to the rear of the premises.
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Decision

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

The submissions for the Council of the London Borough of Brent

2. The respondent acted unreasonably in pursuing the appeal because there was no prospect of success on any of the 4 grounds pleaded.
3. The appeal on ground (b) was unarguable because the breach alleged in the notice had occurred as a matter of fact and degree, as the respondent would have known. The appeal on ground (c) was also unarguable, there being no planning permission or deemed consent for the use or development alleged in the notice.
4. The appeal on ground (a) related to development that is clearly contrary to planning policy and the respondent failed to put forward any reasonable alternative steps that would remedy the breach in the appeal on ground (f).
5. The applicant (the Council) was told untruths before it issued the notice and further untruths were presented in the appeal.
6. As a result of this unreasonable behaviour, the applicant incurred unnecessary time and costs in defending an appeal which had no reasonable prospect of success, and which was not supported by the respondent's case and evidence.

The response by Mr Marius Solovastru

7. No submission was received from the respondent.

Reasons

8. The Planning Practice Guidance ("the PPG") advises that costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. An

appellant is at risk of costs being awarded against them if the appeal or ground of appeal had no reasonable prospect of succeeding or if they provide information that is shown to be manifestly inaccurate or untrue.

9. The respondent only pursued the appeal on ground (a) in respect of the single-storey extension to the rear of the premises and I found, in the Main Decision, that this accords with relevant development plan policies. Consequently, I do not accept the applicant's claim that the appeal on this ground related to development that is clearly contrary to planning policy.
10. I shall therefore examine the remaining grounds of appeal with a view to whether a partial award of costs is justified.

The appeal on ground (b)

11. This ground of appeal was not applied to the operational development of the single-storey extension and the canopy extension. The respondent's evidence was therefore limited to the alleged use of the premises as an HMO and flats, challenging the allegation insofar as it related to the flats.
12. As noted in the Main Decision, an application to licence an HMO under the Housing Act 2004 had confirmed that 2 self-contained flats (rooms 1 and 2) were occupied on the ground floor in July 2020. The accompanying plan showed that each of these flats included a kitchen with oven and hob. While the ovens and hobs were later removed it is not clear exactly when. In any event, section 174(2)(b) of the Act confirms that an appeal on ground (b) must be made on the basis that "those matters have not occurred". The use of the past tense indicates that the appropriate test is whether the flats had been formed, not whether they still existed on the date the notice was issued.
13. From this perspective, and on the balance of probability, the only reasonable conclusion to be drawn from the presented evidence is that the flats had been formed before the notice was issued. Consequently, the appeal on ground (b) stood no reasonable chance of success.

The appeal on ground (c)

14. The respondent's case was limited to the use of the premises, focused on alternative interpretations of that use as described in the allegation. It partly repeated what had been said in the appeal on ground (b), which cannot have given rise to any additional expense on the part of the claimant. However, it was necessary to respond to another strand of argument, that the change of use of the entire premises from a dwellinghouse to an HMO occupied by no more than 6 people did not require planning permission. This appears to rely on the premise that the use of "HMO and flats" alleged in the notice in fact meant "HMO". There is no evidence to suggest this was what the notice alleged and as noted above, the flats had been formed as a matter of fact before the notice was issued.
15. Accordingly, even if the removal of the ovens and hobs had resulted in rooms 1 and 2 becoming part of an HMO occupying the entire building, the relevant change of use would have been from an HMO and flats to an HMO. That is not permitted by Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as claimed and the appeal on ground (c) therefore stood no reasonable chance of success.

The appeal on ground (f)

16. While the respondent did not suggest any alternative steps, there is no requirement for an appellant to do so. Ground (f) is that the steps required by the notice exceed what is necessary and the costs application does not include any criticism of the respondent's case in respect of those steps. Consequently, it has not been demonstrated that the respondent acted unreasonably in pursuing the appeal on ground (f).

Alleged untruths

17. While the applicant alleges that untruths were presented before and during the appeal, none are specified in the submission, so it is not clear what evidence is under question in this regard. Accordingly, it has not been demonstrated that manifestly inaccurate or untrue evidence was presented. For this reason, and as the relevant planning decisions are matters of judgement or made on the balance of probability, I shall not consider this point further.

Conclusion

18. For the reasons given above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the appeals on grounds (b) and (c). However, such behaviour has not been demonstrated in respect of the appeals on grounds (a) and (f). A partial award of costs is therefore justified.

Costs Order

19. 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 Mr Marius Solovastru shall pay to the Council of the London Borough of Brent the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the alleged change of use of the premises in the appeals on grounds (b) and (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Mr Marius Solovastru, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mark Harbottle

INSPECTOR