



Costs Decision

Site visit made on 2 November 2022

by J Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 20 January 2023

Costs application in relation to Appeal Ref: APP/T5150/C/20/3251418 Flats 1-6, 24 Nutfield Road, London NW2 7EB

- 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 Mrs Y Domb for a full award of costs against the Council of the London Borough of Brent (the LPA).
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant's case is predicated on the basis that the LPA has failed to provide evidence of the alleged breach of planning control having occurred and omitted key evidence in the form of relevant court judgements and appeal decisions.
4. On the second point, whilst the LPA did not provide a copy of the *Brent*¹ judgement, it did refer to it in its final comments of June 2021. Moreover, the applicant had provided a copy of the judgement as an appendix to its statement of case. Thus, rightly the LPA did not reproduce evidence that was already before me. Similarly, whilst the LPA did not produce similar appeal decisions which referred to the *Brent* judgement, those decisions post-dated the issue of the enforcement notice and submission of this appeal. I see no reason why the failure of the LPA to withdraw the enforcement notice in light of those decisions was unreasonable.
5. However, the Guidance does state that LPA's must carry out adequate prior investigation for enforcement action. It also states that they 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 ensured that it was accurate.

¹ *Brent LBC v Secretary of State and Reiner* [2020] EWHC 3620 (Admin)

6. S172(1) of the 1990 Act states that the LPA may issue an notice where it appears to them that (a) there has been a breach of planning control and (b) it is expedient to issue the notice.
7. In this case, the notice alleged a breach comprising the material change of use of the property to a mixed use of an HMO and flats. The LPA stated in evidence that there had been fluidity in the use over time. Nevertheless, at the LPA's final recorded visit to the property before the issue of the notice, the LPA found, in its own words, that the property, "appeared to be in use as 6 bedsitting rooms sharing 2 kitchens". The evidence shows the LPA accessed two of the rooms, both of which were reliant on shared kitchen facilities.
8. Thereafter the LPA served a Planning Contravention Notice (PCN) on 20 December 2019. The appellant responded on 30 January 2020 where it stated the property was in use as "6 units". In addition, in response to a question from the LPA of "when the use of the premises as an HMO began" the appellant answered August 2015. Moreover, the appellant responded that there were no self-contained flats within the premises. The appellant thereafter applied for an HMO licence on 2 March 2020 where they described the property as bedsits with shared facilities occupied by 6 persons. The enforcement notice was subsequently issued on 16 March 2020.
9. It is thus difficult to see how it would have appeared to the LPA that the use of the premises, at the date the notice was issued, was a mixed use of an HMO and flats, when even its own most recent evidence did not suggest that was the case. Indeed, it only accessed two of the units at its most recent visit prior to the issue of the notice, neither of which appeared to be in use as self-contained flats. The LPA's case was largely reliant on the use of the word flat to describe the units at various points, rather than any specific evidence of actual use.
10. In its submissions to the appeal, the LPA state that, "some of the units have contained all the facilities required for day to day domestic existence, including cooking facilities and were used as self-contained dwellings, others rely on the communal kitchen. There appears to be some fluidity in the use of the units and the use of the remaining communal accommodation, with varying levels of self-containment and accommodation may be rearranged to form larger self-contained units." However, this is contradictory to its own first hand evidence of the site visit prior to the notice being issued. This is compounded by the failure of the LPA to specify in its evidence which of the units it appeared to it were used as flats and which were in use as part of an HMO.
11. As a result, it seems to me that, had the LPA undertaken more diligent investigation into the use of the premises at the time the notice was issued, then a notice alleging a mixed use to an HMO and flats would not have occurred. That would have either resulted in a notice not being served, in which an appeal could have been avoided, or the notice would have been accurate. As can be seen from the appeal decision, I have concluded that the notice was not accurate insofar as it specified the alleged breach which appeared to be taking place.
12. I conclude, therefore, that the LPA has behaved unreasonably for the above reasons. Wasted expense by the appellant has been incurred in submitting an appeal against the issue of the enforcement notice. Thus, a full award of costs is justified.

Costs Order

13. 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 Brent shall pay to Mrs Y Domb, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Whitfield

INSPECTOR