



Costs Decision

Site visit made on 7 December 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 21st February 2023

Costs application in relation to Appeal Ref: APP/T5150/C/22/3298103 136 Cairnfield Avenue, London NW2 7PJ

- 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 Carlo Lamberti for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against an enforcement notice alleging the erection of railings on the roof of a rear extension.
-

Decision

1. The application for an award of costs by Carlo Lamberti against the Council is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. Local planning authorities have a general discretion to take enforcement action when they regard it as expedient however they are expected to exercise care when deciding to issue an enforcement notice. The PPG warns that local planning authorities 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 ensure that it was accurate.
4. The appellant states that the Council should have served a breach of condition notice rather than an enforcement notice as the use of the roof extension was controlled by a condition attached to a previous planning permission. In addition, the enforcement notice should have stated that the notice related to operational development and not a material change of use. Further, that a notice should not have been served as the railings in isolation do not cause harm. The Council should not have proceeded in the absence of any evidence that use of the roof terrace had actually occurred. It is the appellant's view that had the Council undertaken proper investigations, then the appeal could have been avoided.
5. In response, the Council states that a breach of condition notice would not have been appropriate as the allegation does not relate to use. It does not

consider that it is unreasonable to object to operational development on the basis that it would be likely to facilitate harmful activity.

6. It is a matter for the Council to consider which enforcement route is most appropriate. The condition which the appellant considers to be relevant restricts the use of the roof terrace only and does not extend to operational development. The Council chose to serve a notice relating to operational development. It is not a requirement of the notice to state whether the notice relates to operational development or alleges a material change of use.
7. Whether or not the Council was aware of the conditions relating to the previous planning permission, the appellant accepts that the railings require planning permission. It is therefore unlikely that this matter could have been resolved without enforcement action being taken and a subsequent appeal being lodged, as the appellant wished to retain the railings as a safety feature.
8. The Council's statement did make clear its views on the railings as a safety device and I agreed with those views in dismissing the appeal subject to the variation. Whilst the success of the ground (b) resulted in corrected wording for the allegation, the erection of the railings still required planning permission and the appeal has been dismissed for the reasons given. The Council referred to other appeal decisions to support the wording used. Whilst I did not agree that the wording was appropriate in these particular circumstances, I do not consider that the use of the original wording constitutes unreasonable behaviour.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice has not been demonstrated and that a full award of costs is justified. The application for an award of costs is refused.

E. Griffin

INSPECTOR