



Costs Decision

Inquiry held on 25 and 26 April 2023

Site visit made on 27 April 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2023

**Costs applications in relation to Appeal Ref: APP/T5150/C/22/3295449 (Appeal A); Appeal Ref: APP/T5150/C/22/3295645 (Appeal B); and Appeal Ref: APP/T5150/X/22/3290487 (Appeal C)
15 & 15A Wyborne Way, LONDON NW10 0TE**

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5) (Appeals A and B) and under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5) (Appeal C).
- The applications are made by the Council of the London Borough of Brent for full awards of costs against Mr Kamaran Shiwani.
- The inquiry was in connection with appeals against enforcement notices alleging: Without planning permission, the material change of use of the land to the rear of the premises to separate residential use (Appeal A); and, without planning permission, the erection of a single storey rear extension to the premises and, without planning permission, the erection of a shed type structure in between the rear extension and the outbuilding at the premises (Appeal B); and an appeal against the refusal of the Council to issue a certificate of lawful use or development for existing use of a single storey building as a self-contained dwelling (15A) in rear garden, existing rear extension to dwellinghouse (15 Wyborne Way), and area of hardstanding to frontage (Appeal C).

Decisions

1. The applications for awards of costs in respect of Appeals A and C are both allowed in part in the terms set out below.
2. The application for an award of costs in respect of Appeal B is refused.

The submissions for the Council

3. The respondent acted unreasonably in procedural terms because he:
 - Did not co-operate in providing information or discussing the appeals. Inconsistency with the case he made in an earlier appeal has not been explained. His case has been adversarial, he has refused to accept basic facts and has disputed irrefutable matters.
 - Did not complete a timely Statement of Common Ground and thereby did not allow the requirement for evidence to be narrowed. Instead, he refused to accept basic facts and tried to assert untruths.
 - Delayed in providing information and failed to adhere to deadlines, renewing and attempting to renew his case up to and during the Inquiry.
 - Introduced fresh and substantial evidence at late stages.
 - Provided information that is manifestly inaccurate or untrue, including evidence found to be false in a previous appeal or fabricated.

- Deliberately concealed relevant evidence concerning the history of use and development of the appeal premises.
4. The respondent acted unreasonably in substantive terms because:
- Material considerations to indicate that decisions should be made other than in accordance with the development plan were not advanced. This was despite the unacceptable relationship between the unauthorised uses and development and with adjacent lawful use and development.
 - He failed to prove matters of fact. It was obvious that there was no failure in the service of the notices and that unlawful development had occurred, which is why evidence needed to be fabricated.
 - His evidence was not precise and unambiguous, but was misleading, confusing, inaccurate, or irrelevant.
5. The Council contends that, had the respondent behaved differently, the appeals could have been avoided or dealt with by written submissions, or the Inquiry would have been shorter.

The response by Mr Kamaran Shiwani

6. The appeals were precipitated by the Council's fast-track approach to planning enforcement, with action being initiated while he was out of the country rather than being taken as a last resort.
7. He did not request an Inquiry but has exercised his right to appeal the notices and the refusal. The documents submitted in support of the appeals are genuine.

Reasons

8. Parties in planning appeals normally meet their own expenses. However, 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.
9. All parties to an appeal are expected to co-operate to minimise areas of disagreement and avoid delay. The production of a Statement of Common Ground can be an important aspect of this. Rule 16 of the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 states, "The local planning authority and the appellant shall together prepare an agreed Statement of Common Ground".
10. In view of this, and from the limited information about how the parties approached the task, it is not clear that the respondent should reasonably be held accountable for any failure in co-operation. Neither is it clear whether any instance of the respondent not adhering to timelines caused the applicant to incur unnecessary or wasted expense.
11. There was significant ambiguity in the respondent's evidence. Some of his evidence was questionable and, despite his denial, one photograph did appear to have been altered. However, even if that amounted to fabrication, it did not go to the heart of the matters upon which any of the appeals turned.

12. The most significant questionable evidence is a tenancy agreement between the respondent and his brother dated 8 August 2015. It was produced with the intention of demonstrating 16 months' separate residential use of a building subject of Appeals A and C. However, it had also been presented as evidence that the use was taking place in a different building in 3 appeals made in 2019. It is inconceivable that the respondent did not know which building the tenancy related to, or where his brother was living, so it is inescapable that he has used this document as false evidence, either in 2019 or in the current appeals.
13. The 3 linked appeals were originally intended to be determined following exchanges of written representations. However, they were made the subject of the Inquiry in order that personal testimony relating to the alleged separate residential use could be given orally and tested in cross-examination. This procedure, in particular the respondent and his brother's inability to adequately explain the contradictory use of the August 2015 tenancy agreement, exposed the ambiguity and lack of precision in his evidence.
14. The respondent appears to have prioritised matters other than material planning considerations and the development plan across the 3 appeals. However, the only matter for which planning permission was sought is the rear extension in Appeal B. The facts indicate that it was not finished, with exposed insulation material on its outer surfaces, when the relevant notice was issued. It appears that the applicant's criticism of the extension stem from an assessment of it in this incomplete state. I see no particular reason why an appellant should have to justify the appearance of a building that was effectively 'work in progress'.
15. While other development plan policies concerning the living conditions of neighbours may be material to the separate residential use, the notice in Appeal A did not make explicit any harm that it had caused. The applicant did little to elaborate on this in the Inquiry and I am therefore not convinced that there was much of a case for the respondent to address in this respect.
16. Similarly, the erection of the rear extension has reduced the private amenity space available to the occupiers of No. 15 and that is a material planning consideration. However, evidence that any deficiency arose from the erection of the extension, rather than other operational development, for example the erection of Building 1 or Building 2, was absent. It is not clear that the respondent needed to make this a significant part of his case.
17. The respondent's case on ground (e) in Appeals A and B repeated what he had argued, without success, in earlier appeals. He did not present any evidence that he or any other person had been substantially prejudiced by any failure in service. It should therefore have been plain to him that the appeals on ground (e) stood no chance of success, so it was unreasonable behaviour to pursue appeals on that ground. However, the applicant made identical 34-word responses in its Statement of Case and in Mr Wicks' Proof of Evidence. Any unnecessary or wasted expense on this ground would therefore be negligible.
18. Some evidence presented in the appeal on ground (d) in Appeal A did not seem to support the respondent's claims. For example, photographs of Building 1 with lights on at night could not demonstrate that anybody was living in it. Considerable evidence regarding the respondent's work-related travels within the UK and abroad and his movements around London were presented but it was not made clear how that might demonstrate separate residential use. Had

the respondent focused on evidence that was material to his claim of uninterrupted separate residential use, the Inquiry would have been shorter. Furthermore, considerable time could have been saved, or the Inquiry might have been avoided, if he had addressed the obvious questions concerning the August 2015 tenancy agreement, which was critical to his case on ground (d) in Appeal A and in Appeal C.

Conclusion

19. For the reasons set out in paragraphs 12, 13 and 18 above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. This relates to the appeal on ground (d) in Appeal A and part of Appeal C and a full award of costs in respect of those appeals, and in respect of Appeal B, is therefore not justified.
20. Consequently, a partial award of costs, limited to the appeal on ground (d) in Appeal A and to Appeal C, insofar as it relates to the use of Building 1, is justified.

Costs Order

21. 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 Kamaran Shiwani 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 the appeal on ground (d) in Appeal A and in respect of the use of Building 1 in Appeal C; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mr Kamaran Shiwani, 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