The Planning Inspectorate

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 Mr Kamaran Shiwani for full awards of costs against the Council of the London Borough of Brent.
- 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).

Decision

1. The applications for awards of costs in respect of Appeals A, B and C are refused.

The submissions for Mr Kamaran Shiwani

2. The respondent acted unreasonably because:

    - The application for a certificate of lawful use or development (LDC) had been made to resolve matters; it is unacceptable that the applicant should have to pay for something he is entitled to as a citizen.
    - No account was taken of the remaining curtilage associated with No. 15, nor the absence of any adverse effect on neighbours. The rear extension should therefore have been judged to be permitted development. Furthermore, it is needed to provide adequate accommodation for the applicant’s family.
    - As soon as the respondent refused to issue an LDC, it began seeking evidence that might amount to a breach of planning control, knowing the applicant was away. This caused the applicant and his family distress.
    - The enforcement notices were rushed through, with no time for the applicant, who was overseas at the time, to address matters. They were issued because the respondent had made errors in a previous notice, which

has been complied with. The respondent made judgements about the applicant from prior experience, rather than taking proportionate steps to remedy any breach.

- All costs in the appeals have arisen because of the respondent's determination to prove the applicant a liar. The respondent's allegations are a simple story, based on assumptions of fabricated evidence and fraudulent activity.

The response by the Council

3. The notices were issued a little over 2 months after the refusal to issue the LDC. That application had been made on the basis that the rear extension was substantially completed in May 2018 and that evidence presented to demonstrate occupation of Building 2 in a previous appeal was in fact evidence of occupation of Building 1. The respondent needed to act before immunity could be claimed.

4. The applicant accepted the respondent's case about the shed, which has been demolished, and the extension, which was altered after the relevant notice was issued.

5. However, he would not voluntarily cease the separate residential use and has failed to identify lesser steps that would resolve the breach of planning control. It was correct to conclude that only enforcement action would allow resolution.

6. The applicant's conduct made the Inquiry necessary. The respondent went 'above and beyond' by producing evidence that the applicant should have provided himself. Any distress and costs arise from the applicant's conduct.

Reasons

7. 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.

8. The fee for an LDC application is prescribed by legislation and is for a determination as to whether permitted development rights apply to a given development, not for the exercise of those rights. The respondent had no option but to require payment of the application fee, which is nationally prescribed. Measurements taken during the site visit confirm that the rear extension exceeds 3 metres in depth from the rear wall of the original dwellinghouse. It was therefore not immune from enforcement action and the respondent's refusal to issue an LDC in respect of it was well founded. The respondent did not act unreasonably in this respect.

9. Just under 12 weeks elapsed between the decision to refuse to issue the LDC and the issue of the notices. That does not appear to be a particularly short period when the possibility of immunity from enforcement action being acquired through passage of time is considered.

10. There may be some uncertainty as to what needed to be done to comply with the requirement of an earlier notice to demolish an outbuilding. However, it has not been explained why that has any bearing on the refusal of the LDC or the issue of the current enforcement notices in respect of different development.

11. The reasoning above relates to the facts of the relevant development, not the character of the applicant. However, the appeal on ground (d) in Appeal A and much of Appeal C turned on the credibility of evidence presented by the applicant and whether his personal testimony was precise and unambiguous. I have noted significant and obvious unanswered questions about key evidence in the Main Decision, in particular the August 2015 tenancy agreement. It is not unreasonable for the reliability of a witness and their evidence to be challenged in such circumstances.

Conclusion

12. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Harbottle

INSPECTOR