



Costs Decision

Site visit made on 13 June 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Costs application in relation to Appeal Ref: APP/T5150/C/20/3245605 Studio Flats 1-5, 81 Mandela Close, LONDON NW10 8BQ

- 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 Mr Nathan Beck for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against an enforcement notice alleging the material change of use of the premises to mixed use as a House in Multiple Occupation (HMO) and flats, and the erection of a single storey extension to the rear of the premises.
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Decision

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

The submissions for Mr Nathan Beck

2. The respondent acted unreasonably because it:
 - Omitted to refer to a recent High Court judgment in relation to an identical notice it had issued and the appeal decisions that followed that judgment. The judgement and the subsequent decisions had concluded that the introduction of a cooking facility does not necessarily change the status of a room within an HMO to a self-contained flat.
 - Relied on appeal decisions that pre-dated the High Court judgment and an incorrect decision letter for one appeal.
 - Failed to produce evidence from site visits or declarations from the officers who visited to substantiate the alleged mixed use.
 - Only produced selected evidence in the form of housing benefit applications.
 - Presented arguments inconsistent with its case in an identical appeal.
 - Failed to pin down the use of each room, not stating whether each of the 5 rooms was in use as a flat or in HMO use.
3. This unacceptable behaviour amounted to deliberate misleading of the appeal process.

The response by the Council

4. The appeal was made before the High Court judgement but the appeal decision it related to had been provided. The judgement was referred to in the respondent's final comments.

5. The applicant's response to a planning contravention notice, his statutory declarations, his advice to the licensing service and housing benefit applications indicate that rooms were let on different terms, supporting the allegation of a mixed use.
6. The applicant has always had access to more comprehensive evidence about how the building was used and has always been able to provide it.

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. While the applicant seeks a full award of costs, his evidence is restricted to the alleged material change of use of the building, not the operational development comprising the erection of a single storey extension. For this reason alone, a full award of costs is not warranted.
9. The High Court judgement pre-dated the respondent's statement of case and therefore could have been referenced at that stage. However, I share the respondent's view that the judgement confirms that whether a material change of use has occurred is a matter of fact and degree, to be determined on the facts of each case using planning judgment and expertise. Of itself, that did not alter the facts of the appeal.
10. In the context of that determination, I see nothing unreasonable in referring to the facts of appeal decisions that pre-dated the High Court's judgment. The incorrect appeal decision had mistakenly stated that the appeal was dismissed, and the notice upheld. While it was reissued correcting that error, the substance of the Inspector's decision remained the same. It has not been identified that additional or unnecessary expense was incurred because of this, or that the use of the wrong decision was a deliberate act.
11. However, the important principle recognised in the High Court's judgment, of pinning down the use of each room, does not appear to have been followed in the respondent's case in this appeal. As I found in the Main Decision, there have been ambiguities in the relevant evidence, indicating that rooms were let on different terms at different times. However, the respondent's evidence in support of the alleged mixed use is limited, with an incomplete record of what was observed during the inspection it undertook days before issuing the notice. There is no reliable evidence that rooms were let on different terms at that time, or at any point after April 2018, and therefore that the alleged mixed use had been instituted when the notice was issued or in the period leading up to the date of issue.
12. Notwithstanding that conclusion, it has not been demonstrated that the appeal process was deliberately misled.

Conclusion

13. 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 alleged mixed use but not in respect of the erection of a single storey extension.

14. Consequently, a partial award of costs, limited to the alleged material change of use to mixed use as an HMO and flats, is justified.

Costs Order

15. 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 Mr Nathan Beck, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the alleged material change of use to a mixed use as an HMO and flats; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. 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.

Mark Harbottle

INSPECTOR