



Costs Decision

Hearing held and site visit made on 31 May 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Costs application in relation to Appeal Ref: APP/G5180/C/22/3291401 Land at 404 Blandford Road, Beckenham BR3 4NN

- 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 Ricki Sage for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against an enforcement notice alleging a material change of use from a Class C3 dwellinghouse to a mixed use of residential and gym for the purposes of a personal training business.
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Decision

1. The application for an award of costs is refused.

Case for the applicant

2. The applicant contends that it was not expedient to pursue enforcement action against the alleged breach, and that the Council failed to produce any evidence of a definable change in the character of the land. This amounts to an application for costs on substantive grounds.

Case for the respondent

3. The Council contends that expediency is a matter for the courts and not the Planning Inspectorate. Furthermore, they provided detailed evidence and analysis in their appeal submissions, relying on previous findings in advancing its case. Ultimately it is for the applicant to provide evidence to support an appeal on legal grounds.

Reasons

4. 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.
5. The Council conceded at the Hearing, that it would not have been expedient to take enforcement action in respect of the operation of the personal training business on the basis of a maximum of 2 clients per day, Monday through Friday. However, the Courts have held that the matter of expediency must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether the Council complied with s172(b) of the 1990 Act. The matter of expediency is not therefore one that was before me for consideration.
6. S172(1) of the 1990 Act provides that a local planning authority (LPA) may issue an enforcement notice where 'it appears to them (a) that there has been a breach of planning control'. The LPA does not have to be certain that a

breach of planning control has occurred or that there are no grounds of appeal, it is for the appellant to establish such grounds. In this case, the outcome of the lawful development certificate applications and subsequent failure of a High Court challenge, demonstrated that a breach of planning control had occurred. The failure of the appeal on grounds (b) and (c) confirm that there had been a breach of planning control as a matter of fact.

7. The PPG advises that local planning authorities must carry out adequate prior investigation before issuing an enforcement notice. It is evident that the Council relied upon information provided in two lawful development certificate applications for existing uses, the outcome of subsequent appeals and the High Court's decision. Furthermore, a few weeks before the Notice was issued the appellant submitted a lawful development certificate application for a proposed use. Given that such an application indicated that the curtailed level of use was proposed, it is not unreasonable of the Council to have concluded that the level of activity remained the same or similar to that at the time of the previous existing use LDC.
8. Further investigation by the Council, perhaps including a site visit prior to issuing the Notice, may have identified a change in scale of the personal training business. This need not however have changed the Council's opinion that a material change of use had occurred based on the previously identified definable change in character of the land. Such a position is borne out by the Council's concession that it may not have been expedient to take action, as opposed to them conceding that the reduced level of activity demonstrated that a material change of use had not occurred. Undertaking further investigation need not therefore have prevented a Notice being issued. In such circumstance, the submission of an appeal would have been more than likely.
9. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Madge

INSPECTOR