



Costs Decisions

Site visit made on 8 November 2022

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2023

Costs application (1) made in relation to Appeal B:

APP/T5150/X/20/3256854

50 Village Way, London, NW10 0LL

- Costs application (1) is made by NDB Holdings Ltd for a full award of costs against the Council of the London Borough of Brent.
 - The application is made under sections 195 and 322, and Schedule 6 of the Town and Country Planning Act 1990 and section 250(5) of the Local Government Act 1972.
 - Appeal B was made against the Council's decision to refuse to grant a lawful development certificate for a single storey rear extension and C4 HMO.
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Costs application (2) made in relation to Appeals A and B:

APP/T5150/C/20/3245073 and APP/T5150/X/20/3256854

50A-F Village Way, London, NW10 0LL

- Costs application (2) is made by the Council of the London Borough of Brent for a partial award of costs against NDB Holdings Ltd.
 - The application is made under sections 174, 195 and 322, and Schedule 6 of the Town and Country Planning Act 1990 and section 250(5) of the Local Government Act 1972.
 - Appeal A was made against an enforcement notice alleging that there had been a material change of use of the premises to a House in Multiple Occupation (HMO) and flats, and the erection of a single storey rear extension.
 - Appeal B was made against the Council's decision to refuse to grant a lawful development certificate for a single storey rear extension and C4 HMO.
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DECISIONS

1. Costs application (1) is refused.
2. Costs application (2) is refused.

PRELIMINARY MATTERS

3. Costs application (1) was made by the appellant company in writing; they seek a full award of costs but only in relation to Appeal B. The appellant stated that they would be 'likely to also apply for costs in relation to the enforcement notice being issued, however, will do so at the appropriate stage'. No such application was made. The Council submitted a written response to Costs application (1), and the appellant then made final comments.
4. Costs application (2) was made by the Council in writing for a partial award of costs in relation to Appeals A and B. The appellant submitted a response to Costs application (2) and the Council made final comments. I have taken account of all representations.
5. The Planning Practice Guidance (PPG) provides that where a party to a planning proceeding has behaved unreasonably and, in so doing, directly caused another

party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs¹.

COSTS APPLICATION (1)

Reasons

6. The appellant states that the Council's reason for refusing the LDC application 'bore absolutely no resemblance to the case that had been submitted'. They suggest that the Council behaved unreasonably in refusing the LDC application, and thereby caused them to incur wasted expense in making what was an unnecessary Appeal B.
7. The Council refused to grant an LDC on the basis that neither the extension nor HMO 'have been situated...for a period in excess of 4 years' in conflict with s171B of the Town and Country Planning Act 1990 (TCPA90). However, the appellant's case, as set out in the letter dated 30 April 2020 submitted with the LDC application, was not that it was too late for the Council to take enforcement action. Their case was that:
 - The existing use of the building was as an HMO, not an HMO plus flats. The 2017 LDC had been granted because the change of use of the building from a single dwellinghouse to a C4 HMO use was lawful by reason of being permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
 - The extension was lawful because it was subject to the 2015 prior approval. The appellant did refer in the 30 April 2020 letter to when the extension was built, but they also stated there that they would withdraw their ground (d) appeal against the enforcement notice, and their case was 'wholly based on the implementation of the [prior approval] post the receipt of the "approval" from the' Council.
8. The Council conceded that their reason for refusal did not reflect the appellant's case but suggest that does not matter. The Council is correct that, in an LDC appeal, the question for the Inspector is whether the refusal of a certificate was 'well-founded', not whether the reason for refusal was accurate. However, that point presupposes that an appeal is necessary, and the appellant is suggesting that they would not have needed to make Appeal B at all if the Council had addressed their evidence properly.
9. I agree with the appellant that, even if they did not formally withdraw the ground (d) appeal against the notice until a later date, the basis of their LDC application was clear. The Council behaved unreasonably in failing to address that evidence and refusing the LDC application for the reason that they gave. However, it does not follow from that, or from the fact that I allowed Appeal B, that the appellant incurred wasted expense in making it.
10. The Council's representations make it clear that, even if they had further scrutinised the appellant's evidence in the first place, they still would have refused the LDC application. The Council contested Appeal B because they considered the building to be in an unlawful use as an HMO plus flats. While I found against the Council, it was not unreasonable in costs terms for them to make that argument because there was evidence of the bedsits being described

¹ PPG paragraph ref ID: 16-028-20140306

as flats for rental and housing benefit purposes, plus, there had been cooking facilities in some of the bedrooms.

11. Accordingly, it was also not unreasonable for the Council to find the extension unlawful. It would not have been permitted under the GPDO if, as the Council contended, it had been built to facilitate a change of use of the building to use as flats or an HMO plus flats.

Conclusion

12. I conclude, with regard to all other matters raised, that the Council behaved unreasonably in refusing to grant an LDC for the reason given. However, the appellant did not incur unnecessary expense in making or contesting Appeal B. Costs application (1) for a full award of costs pursuant to Appeal B is refused.

COSTS APPLICATION (2)

Reasons

13. The Council seeks a partial award of costs in relation to what they describe as two counts of procedural and two of substantive unreasonable behaviour by the appellant. I deal with these in turn.

Procedural

14. Firstly, the Council objects that the appellant failed to provide a statement of case but that is simply incorrect. I wrote to the parties on 7 June 2023 to clarify the evidence before me and it then transpired that the Council had not received the appellant's statement when it was submitted in July 2020.
15. I cannot comment on whether the appellant (should have) sent a copy of their statement direct to the Council, but it is apparent that the Planning Inspectorate had failed to cross-copy it upon receipt. I apologise for that administrative error on the Planning Inspectorate's part and do not hold the appellant responsible for it.
16. The appellant sought an extension of time for the deadline for final comments but the making of that request was neither unusual nor unreasonable. The extra time was also afforded to the Council. I am satisfied that the appellant did not unreasonably delay their evidence or fail to adhere to deadlines.
17. The Council was given an opportunity to respond to the appellant's statement after my June 2023 letter and it was then that the Council made this Costs application. I therefore assume that the Council took the statement into account when claiming that the appellant did not address conflicts of fact and interpretation. This strikes me as a more substantive than procedural issue and so I shall deal with it below.
18. The second procedural claim by the Council is that the appellant provided evidence that was 'manifestly inaccurate or untrue'. I accept that the appellant initially gave inaccurate dates for the completion of the extension but as noted above, they informed the Council that they would not rely on that in their supporting letter submitted with the LDC application and, therefore, early in the enforcement appeal process. The appellant did not behave unreasonably or cause the Council to incur unnecessary expense.

19. I also find that the appellant did not submit such 'misleadingly selective photographs and descriptions of "rooms" 5 and 6' as to behave unreasonably. Neither party provided what could be described as a complete photographic record of every bedsit in the building, and that does not matter because there was little dispute as to what was actually in the rooms. The key question for me, in relation to the use of the building, was not whether a microwave or halogen cooker had ever been present in Bedsits 1, 5 or 6, but whether that meant the bedsits were self-contained flats.
20. Finally, the Council suggests that the appellant provided inaccurate (or perhaps that should read 'incomplete') evidence by making no mention of a roof extension and rooflights installed to create Bedsit 6. However, the enforcement notice does not allege that such works were carried out unlawfully, and the word 'roof' does not appear in the Council's enforcement report or statement of case. It is not clear how the installation of rooflights could show whether Bedsit 6 was used as self-contained flat or HMO bedroom.

Substantive

21. The Council argues that the appeal development is not in accordance with the development plan in terms of national space standards, and the appellant has not substantiated their claim to have provided 'lower cost accommodation to a high standard'. The Council also suggests that, in relation to facts and lawfulness, the appellant's evidence was not always precise or unambiguous. I agree with that latter point, but it is not a test for an award of costs.
22. The cover page of the appellant's statement of case suggested that it related only to the LDC proceedings, but the text also amplified their case for Appeal A and each enforcement ground of appeal. I am satisfied that the appellant did not unreasonably fail to address conflicts of fact and interpretation. I also note that, while I did not consider planning merits, the appellant's statement did explain, with reference to the facilities, their view that the building is used as a 'better quality HMO'. They did not provide 'inadequate supporting evidence'.

Conclusion

23. It follows from my decision to allow Appeals A and B that neither was made unreasonably. For the reasons given above, and with regard to all other matters raised, I conclude that the appellant did not behave unreasonably or cause the Council to incur any unnecessary or wasted expense in either appeal proceedings. Costs application (2) is refused.

Jean Russell

INSPECTOR