



Costs Decision

Site visit made on 29 August 2023

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 16 October 2023

Costs application in relation to Appeals Ref: APP/T5150/C/22/3311970 16 Nettleden Avenue, Wembley HA9 6DP

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the London Borough of Brent for a full award of costs against the appellant.
 - The site visit was in connection with an appeal against the issuing of an enforcement notice for the material change of use of the outbuilding at the rear of the premises to separate residential accommodation.
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Decision

1. The costs application is allowed in part and the appellant is to pay the Council's costs as set out below.

The submissions

2. The submissions for the Council and appellant were made in writing.

Reasons

3. The Planning Practice Guidance 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.
4. Essentially the Council say that the appeal had no reasonable prospect of success, so was unreasonable, resulting in wasted expense for the Council.
5. The appellant argues that the initial reaction to the enforcement notice was made without professional advice and therefore most grounds of appeal were ticked. I can see how this may have been an initial reaction, but the appeal has been going for some time and professional advice obtained, so there has been plenty of time to amend the grounds of appeal.
6. The appeal under ground (b) was completely without merit as the use was effectively acknowledged by the appellant in some form or other, but particularly on the planning contravention notice. A separate dwelling house clearly needs planning permission, whether it is said to be an ancillary use or not and so the ground (c) appeal could not succeed. The appellant argues the case as an ancillary use, but there clearly has been at least one tenant, not just the daughter.
7. A building capable of use as a separate dwelling, even if used ancillary to the main property, such as a granny annexe, still needs planning permission, where a condition is usually imposed to tie the uses together.

8. The appellant indicated on the planning contravention notice that the use commenced in 2021 and was temporary, so the 4 years of use could not be shown on the balance of probability.
9. In terms of the ground (f) appeal the enforcement notice was clearly directed to remedy the situation, so the use has to cease to achieve the aims of the notice. Ancillary use by the daughter would not be acceptable as different properties are involved. The appeal on ground (f) was without merit.
10. The ground (a) appeal was also bound to fail, given the Council's policies that prevent the formation of separate residential accommodation. The appeal has clearly caused the Council wasted expense in defending it. It is not a matter of being deliberately misleading or disrespectful of the Council, just that the appeal made had no merit and was wasteful of the Council's time.
11. I do not consider it unreasonable that the appellant should seek to extend the compliance period under ground (g), to enable her to rearrange occupation of the building. I accept that it was empty when I visited, but probably not at the time the notice was issued. To remove the internal fittings could be achieved within the period stated, but to seek a little more time to make arrangements etc. is not unreasonable behaviour.
12. I therefore find that, in part, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

13. 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 Mrs Farrah Zahid shall pay to the London Borough of Brent the costs of the appeal proceedings described in the heading of this decision apart from that related to ground (g). Such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The London Borough of Brent is now invited to submit to Mrs Farrah Zadhid, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Dudley

Planning Inspector