



Costs Decision

Site visit made on 17 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2023

Costs application in relation to Appeal Ref: APP/T5150/C/22/3306217 Land on Empire Way at junction of Fulton Road, Wembley HA9 0TF

- 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 the Council of the London Borough of Brent for a partial award of costs against Wembley City Hix Limited.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of the premises to a car park.
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Decision

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

Reasons

2. 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.
3. The appellant is professionally represented by a team who should be fully aware of the expectations around their conduct during the appeal process. The appeal form indicates that an appeal was being made on ground (d) because at the time the appeal was submitted, they had not completed research into the historic uses of the land and the appellant wanted to preserve their position. It was clearly stated that a decision of whether or not to proceed with a ground (d) appeal would be reviewed.
4. The appellant has explained how, before the enforcement notice was issued, they did not receive all correspondence, including a planning contravention notice, which would have alerted them to the Council's investigations and need to undertake background checks earlier. While it seems unlikely that the appellant, as owner of the site, did not know that the use only commenced relatively recently, I cannot be sure of historic arrangements between them and previous tenants so as to be certain that they knew the ground (d) appeal would have no success at the outset of the appeal process.
5. Having made the appeal, ideally, the appellant could have advised the Planning Inspectorate and Council that they would be withdrawing ground (d) as soon as they knew that it would not succeed, and before the Council had to evidence its defence of that ground. However, I have no evidence as to when the necessary research was completed and the ground was withdrawn at appeal statement stage being the first formal point for submissions during the appeal process. While the Council did not receive this until after final comments were made, this was due to administrative problems and not the behaviour of the appellant.

6. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

M Bale

INSPECTOR