
Costs Decision

Site visit made on 18 July 2023

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Costs application in relation to Appeal Ref: APP/T5150/C/22/3300242 & APP/T5150/C/21/3288345

3 Flamsted Avenue, Wembley HA9 6DL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Properties UK 1948 Ltd for an award of costs against the Council of the London Borough of Brent.
 - The appeal was against the Council's decision to issue enforcement notices against the use of the dwelling as a House in Multiple Occupation (HMO).
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance indicates that a party could be at risk of an award of costs if it fails to withdraw an enforcement notice without good reason.
3. The applicant considers that the Council behaved unreasonably in that, prior to the first enforcement notice being issued, no planning contravention notice (PCN), which is used as a requisition for information, was served by the Council.
4. The applicant also disputes the need for the second enforcement notice, and considers that this was the catalyst for PINS deciding that an Inquiry would be necessary.
5. Dealing with the means of appeal first, I note that the applicant, when appealing the first enforcement notice, requested that the appeal be dealt with by means of the Written Reps procedure. In response, the Council, through its Questionnaire, requested that an Inquiry was the most appropriate method in the circumstances.
6. The reason for this request was doubtless consistent with the contents of an e-mail dated 29 March 2023 from Kushal Patel of the Council, where he states:

"The procedure should continue as a public inquiry as there is extensive factual dispute between the parties, and the evidence needs to be tested through formal questions, and under oath."

7. After consideration of the Council's request PINS agreed, and this is confirmed by PINS' letter to the parties dated 7 February 2022. Subsequent to this I have also noted that, when appealing the second enforcement notice on 31 May 2022, the applicant requested an Inquiry.
8. In the circumstances, and having since been party to all the evidence adduced, I am satisfied that an Inquiry was the most appropriate means of testing the evidence and the case could not have reasonably proceeded otherwise.
9. The other two points – the absence of any PCN and the Council's decision to issue a second enforcement notice, are interlinked, and I will deal with these matters together. I agree with the applicant that it is usual practice to, in the first instance, serve a PCN, although this is not a mandatory step.
10. That said, in this instance, it is unlikely that the appellant's responses to pre-set questions would have thrown light on the actual nature of the breach occurring. I say this because, on a number of matters I found the appellant's evidence to be less than convincing. However, it is not fully clear to me whether this was down to a misunderstanding of the relevant legislation and, as a result, it being misapplied to the points at issue. The Council's witness also made the point that the applicant was less than helpful in submitting evidence to substantiate its case that the property had been in use as two flats.
11. In the event, I am of the view that the Council likely issued the first enforcement notice without full knowledge of the facts, especially as I found this notice to be invalid. Maybe a PCN might have helped the Council ascertain the actual planning position as, it seems to me, in the six months between the notices being issued, the Council reassessed the situation, thereby rectifying matters. This may have been down to the applicant's initial grounds of appeal but, whatever the reason, I am surprised that the Council, when issuing the second enforcement notice, did not withdraw the first.
12. Nonetheless, I am not convinced that appealing both notices involved the applicant wasting time and undue expense in the representations made. The applicant needed to provide a full and cogent account as to why the notices were defective and were not warranted in the circumstances, but this, though, did not prove possible due to the provisions of the relevant legislation. Accordingly, the legal ground appeals could not succeed.
13. For the reasons given above, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
14. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR