

Costs Decision

Site visit made on 26 January 2023

by Grahame Kean MRTPI, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1 December 2023

Costs application in relation to:

Appeal Ref: APP/T5150/X/22/3311841

Land at Ground Floor Flat, 154a Harlesden Road London NW10 3RE

- The application is made under the Town and Country Planning Act 1990 (1990 Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Aaron Muorah for a full award of costs against London borough of Brent (the Council).
 - The Appeal was against the refusal of an application for a lawful development certificate (LDC) seeking certification of the use of the land as a single dwelling house.
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Decision

1. The decision on the appeal was issued on 3 February 2023. I have awaited the outcome of related proceedings in the High Court and Court of Appeal before issuing this costs decision.
2. The application for an award of costs against the Council is refused.

The application

3. The application was for a full award of costs, made in writing. The Council responded in writing and the Applicant made a reply thereto.

Essence of the case for the Applicant

4. The use of the premises subject to enforcement action by the Council was lawful. The Council was unreasonable in failing to withdraw an entirely invalid enforcement notice which has caused extensive legal proceedings.
5. The Council also acted unreasonably in refusing the second application for a lawful development certificate and forced the Applicant (or his family) to undertake a further appeal knowing fully well that, or failing to investigate the extent to which, its enforcement notice was invalid.

Essence of the case for the Council

6. There were no grounds to withdraw the enforcement notice. The Council identified a breach of planning control and took enforcement action within the time limits. The appellant had challenged appeal decisions which found that the notice was not invalid or a nullity. The use of the premises was not lawful. The 2017 notice remained in force and was not withdrawn or found to be invalid or
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a nullity. Therefore there was no unreasonable behaviour in issuing the notice or in conducting the appeal.

Reasons

7. Paragraph 30 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
8. In the Appeal Decision I dismissed the appeal, determining that the pre-existing enforcement notice was extant and therefore apt to render the use applied for, a contravention of its requirements (and therefore unlawful) since it remained "in force", even although, at the time when the LDC application fell to be considered, it might not have "effect" within the meaning or meanings ascribed to that word elsewhere in the 1990 Act.
9. On a challenge to that decision in the High Court the issue of "in force" and in effect" was not part of the ratio of the judgment, however the court dismissed the claim made by Ms Muorah, the daughter of the Applicant herein, because the claim had become academic. The subdivision of the premises into two flats was first enforced against by the Council in 2017. Appeals brought against the enforcement notice ultimately failed to establish that the notice was invalid.
10. Other legal challenges had resulted in the notice being held valid. Ultimately Ms Muorah's appeal to the courts was struck out as an abuse of process, resulting in the enforcement notice coming into effect in any event, hence the academic nature of the challenge to the Appeal Decision. The challenge was judged to be hopeless.
11. On the substantive issues I had found that the change of use was unlawful at the date of the certificate application and that the Applicant had not demonstrated continuous use for a period of four years, so no immunity from enforcement action arose.
12. Despite some unfortunate drafting in its statement, which did not have any costs implications, the Council investigated the unlawful use and acted appropriately. I am unable to find unreasonable behaviour on the part of the Council that caused the Applicant or his family unnecessary expense in the appeal process.
13. The application is refused.

Grahame Kean

INSPECTOR