
Costs Decision

Inquiry Held on 17,18,19 and 26 October 2023

Site visit made on 17 & 19 October 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 December 2023

**Costs application in relation to Appeal A Ref: APP/T5150/C/22/3304567
& Appeal B Ref: APP/T5150/C/22/3304568**

Land at Connaught House, 20 Acton Lane, London NW10 8TT

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A W Al-Amood and Basrah Developments Ltd for a full award of costs against the Council of the London Borough of Brent.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the formation of a basement and its use as three flats.
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Decision

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

Procedural Matters

2. The appellant in Appeal A is Mr A W Al-Amood. Appeal B has been made by Basrah Developments Limited who is the registered proprietor of Connaught House. Mr A W Al-Amood is the sole Shareholder and Director of Basrah Developments Limited. I have thus referred to him as "the appellant".
3. Due to time constraints at the Inquiry, it was agreed that the response and rebuttal to the Appellants' application for costs could be submitted in writing in accordance with an agreed timetable, which has been adhered to.

The submissions for the Appellant

4. The appellant submits that a full, or alternatively a partial award of costs is justified in relation to substantive matters. He contends that the local planning authority (LPA) behaved unreasonably by failing to carry out adequate investigation, not considering a previous Inspector's decision in relation to a lawful development certificate (LDC) appeal¹ and striving to show positive deception which was contrary to well-established case law.
5. In relation to wasted costs, the appellant considers that based on the evidence and taking into consideration advice in the Planning Policy Guidance (PPG) and case law, the enforcement notice need not have been issued and consequently the appeal and Inquiry would not have been necessary.

¹ APP/T5150/X/20/3259512

The response by the Council of the London Borough of Brent

6. In response the LPA submit that the enforcement notice was issued because there was a breach of planning control relating to an unauthorised development that was considered to be unacceptable. The planning history, including refusals of planning permission, refusal of a lawful development certificate, enforcement notices and unsuccessful appeals in relation to those matters, supported their decision to issue a notice.
7. Evidence was also provided by the LPA as part of the appeal which was not before the previous Inspector who dismissed the LDC appeal, including new evidence from the appellant relating to new window openings. In addition, the LPA believe they carried out diligent investigations and reviewed the evidence available. It was not therefore unreasonable to issue an enforcement notice.
8. Furthermore, in the event that the Inspector found in favour of the appellant on ground (d), the LPA consider that it was not unreasonable, given their investigation, evidence and the circumstances of the case, for them to put forward a case that the immunity provisions of the 1990 Act should not apply, as they believe the appellant had positively sought to deceive the local planning authority.

Reasons

9. The 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.
10. PPG advises that in relation to the handling of an enforcement notice, the LPA are at risk of an award of costs if they fail to carryout adequate investigation and the appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate².
11. It can be seen from my decision that the enforcement notice has been upheld and the appeal dismissed. I found that on the balance of probability the basement and flats have not become lawful because of the passage of time. From the evidence before me the LPA carried out site visits, reviewed the site's planning history, engaged in pre-application discussions, and actively reviewed the evidence before them. Furthermore, the LPA issued Planning Contravention Notices which were not responded to by the appellant. Based on my findings it was not unreasonable for the LPA to serve the enforcement notice and the appeal could not have been avoided.
12. PPG advises that in relation to substantive matters, an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding³. Examples include, acting contrary to, or not following well-established case law. The appellant considers that it was unreasonable for the LPA to bring a case of positive deception taking into consideration the findings in *Welwyn Hatfield v SoS & Beesley* [2011] UKSC 15, and considering *Mansi v Elstree Rural DC* (1965) 16 P &CR 153, any lawful development is required to be safeguarded.

² PPG: Paragraph: 048 Reference ID: 16-048-20140306

³ PPG: Paragraph: 046 Reference ID: 16-049-20140306

13. In this case the basement and flats are not lawful. There is no planning permission nor LDC in relation to either the operational development undertaken to form the basement nor the use of the flats. Whilst the Inspector considering the LDC appeal observed that on the evidence before him the flats, on the balance of probability, had been formed before the relevant date, the appeal did not succeed and no LDC was granted. Moreover, further contrary evidence was submitted as part of this appeal case which cast doubt on the accuracy of the evidence before the previous Inspector.
14. Considering the findings in my decision letter, it was not necessary for me to consider whether there had been positive deception. However, the LPA cited the relevant case law and pointed to evidence and considerations, including examples of what they believed to be “false assurance” to support their case. Whilst it was not necessary for me to make a finding on that issue, it was not unreasonable for the LPA to make that case, and thus there was no wasted expense in the appeal process.
15. For the reasons given above. I conclude that unreasonable behaviour by the LPA, as described in the PPG, has not been demonstrated. No award of costs is therefore justified.

Elizabeth Pleasant

INSPECTOR