
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 the Council of the London Borough of Brent for a partial award of costs against Mr A W Al-Amood and Basrah Development Ltd.
 - 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 allowed in the terms set out below.

Procedural Matters

2. Due to time constraints at the Inquiry, it was agreed that the response and rebuttal to the Council's application for costs could be submitted in writing in accordance with an agreed timetable, which has been adhered to.
3. 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".

The submissions for The Council of the London Borough of Brent

4. The local planning authority (LPA) submit that a partial award of costs is justified in respect of both costs incurred in resisting the appeal in relation to both procedural and substantive matters in relation to grounds (a) (b) and (d).
5. The LPA contend that the appellant behaved unreasonably in respect of procedural matters relating to grounds (a) (b) and (d). They believe that the appellant failed to co-operate with the Council in relation to the unauthorised breach and the appeal in a constructive manner, in particular by: not responding to a planning contravention notice (PCN), failure to agree a statement of common ground (SOCG); changing facts when providing oral evidence; maintaining that eleven witnesses would be called, in the event none other than a planning witness gave evidence; undertaking to provide tabulated bundles of core documents for use by all parties at the Inquiry, but in the event failing to provide the LPA with any.

6. The LPA also contend that the appellant provided evidence that was shown to be manifestly inaccurate or untrue and concealed evidence that would have assisted the Inquiry.
7. In relation to substantive matters, the LPA contend that the appellant produced incomplete and contradictory documents as well as changing his narrative about the timing and nature of the development. In addition, although an appeal on ground (b) was made, no case was made to support it. In relation to ground (a), the LPA do not believe that the appellant addressed the planning reasons for issuing the notice.

The response by the Appellant

8. The appellant claims that during the course of the Inquiry his responses were helpful and straightforward. He did not ignore the PCN, although accepts that he didn't respond to it. Furthermore, it was not possible to agree a SOCG when it was the facts of the case that were primarily at issue. In any event, the failure to agree a SOCG did not result in any wasted expense at Inquiry.
9. In addition, evidence previously given in relation to earlier appeals at the property by the appellant related to an allegation of use as five flats and to lawful use of the basement flats. The focus was therefore on use and not operational development.
10. With regard to the Witness Statements (WS), the appellant contends that his evidence was notably consistent with those WS and the minor differences show their varied authorship, but overall consistency of facts. In relation to documents produced, the appellant could not always remember the detail under pressure due to his protected characteristic¹. The Inquiry remains a civil matter, and it is customary for documents to be produced as photocopies and originals not used. The appellant contends that this was not unreasonable.
11. The appellant acknowledges that the appeal on ground (b) was withdrawn. However, this did not result in any wasted costs for the LPA. The appellant's planning witness advanced a case on ground (a) in his Proof of Evidence and made an evaluated judgement on living conditions and development plan policy.
12. It is contended that the purpose of an inquiry is to test the evidence, and there will inevitably be disagreements. The test in Planning Policy Guidance (PPG) is the balance of probability based on evidence that is "sufficiently" precise and unambiguous, and not a test of beyond all reasonable doubt.

Reasons

13. 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.
14. The PPG further requires appellants to behave reasonably in relation to procedural matters on appeal, for example by complying with the requirements and deadlines of the appeal process. Examples include, resistance to, or lack of co-operation with the other party in providing information, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra

¹ Section 149 of the Equality Act 2010

expense for preparatory work that would not have otherwise arisen; not completing a timely SOCG or not agreeing factual matters common to the witnesses of both principal parties; providing information which was manifestly inaccurate or untrue; withdrawal of an appeal without good reason².

15. A PCN was issued both in July and in October 2016, and delivered by recorded delivery and by hand to the appeal premises. The appellant had taken ownership of the premises by October 2016 and accepts that the PCN was not responded to.
16. In addition to the questions asked which related to ownership and the nature of the appellant's interest in the land, the PCN also requested information on when the use began, and in relation to any planning permissions granted at the premises, or reasons why planning permission may not have been required for works. Although the appellant did not respond, his case has always been that the use commenced in 2016, and he accepted that there was no planning permission for those works, albeit he was aware that planning permission would have been required for them. That said, it seems to me that even if he had completed the PCN with his answers to those questions, based on their own evidence, the Council would still have served the enforcement notice and the appeal would not have been avoided.
17. The Council did spend time preparing the SOCG, and I understand that the appellant's professional agents/solicitors also engaged in that process to an extent. The SOCG was not however agreed/signed. The matters set out in the draft SOCG included relevant planning history and a timeline of events. During the appellant's evidence in chief, he stated that he had undertaken works to install three new window openings in the basement and to improve the access to Flats B1 and B2 by cutting back the veranda in 2019/2020. If the appellant had provided this information of fact when setting out the history of the development/use in an agreed SOCG, in his initial Statement of Case, or indeed in his evidence to support his lawful development certificate appeal, the Council would not have had to take time and expense to demonstrate otherwise during the appeal process. It was only in the light of the Council's own evidence that the appellant conceded the date when he had undertaken those works, and that was unreasonable.
18. The appellant initially made an appeal on ground (b), that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. His initial grounds of appeal advanced that a basement had not been "formed" during his period of ownership (August 2016), being a period in excess of 4 years as the date of the notice. Furthermore, it was his belief that the basement pre-dated any subsequent works to convert it and was a feature of the original house. This ground was not advanced further, and the appellant's evidence to support his ground (d) appeal relied predominantly on evidence of use, as opposed to the evidence to support the operational development undertaken to form the basement itself, which he maintained was undertaken before he purchased the property. On the other hand, the Council's case relied predominantly on evidence that the basement had not existed before 30 June 2018 and the works undertaken to form it took place sometime during 2019/20. It seems to me that the Council relied on the same evidence to support their case in relation to both the ground (b) and the ground (d)

² PPG: Paragraph: 051 Reference ID: 16-051-20140306.

appeals. They did not therefore incur unnecessary or wasted expense in the appeal process as a result of the ground (b) appeal being withdrawn.

19. 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, the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should be made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
20. In relation to the ground (a) appeal, the appellant engaged an expert planning witness who produced a Proof of Evidence and gave evidence at the Inquiry to support his case. He set out national and development plan policy, and identified other material considerations with evidence to support his case. Whilst it can be seen from my decision that I did not find that planning permission should be granted for the unauthorised development, I am satisfied that the appellant adequately supported his case. It was not unreasonable for the appellant to have proceeded with a ground (a) appeal.
21. I appreciate that the Council requested original documents from the appellant during the appeal process and expressed concern about the veracity of the documents and the absence of evidence produced to support the appellant's case. However, the purpose of the Inquiry is to test that evidence, and it is for the appellant to decide how he wishes to present his case.
22. However, the appellant advised in his initial appeal submission, dated 4 August 2022 that he would be calling eleven witnesses to give evidence at the Inquiry. The completed Inquiry Timetable, dated November 2022, identified 14 different Witnesses who were to give evidence. Time estimates and WS were provided for each Witness. In the event only the appellant's expert planning witness gave evidence in support of the ground (a) appeal. No other Witnesses were called, and it was not until the Inquiry opened that the appellant gave any indication that the evidence on ground (d) would be given by him alone and that the other Witnesses would not in fact be attending. The LPA had prepared a cross-examination for each of the Witnesses, and this clearly took time and expense which in the event was wasted. No reasonable explanation has been given as to why those Witnesses were not available to give evidence, and in my view that was unreasonable and resulted in wasted expense on behalf of the LPA.
23. There were clearly issues in relation to the production of the Core Documents, which seemed to stem from a late change in the appellant's representative. This was unfortunate; however, I am not convinced that because of this the Council incurred any wasted expense.
24. For the reasons given above, I conclude that unreasonable behaviour by the appellant resulting in unnecessary expense, as described in the PPG, has been demonstrated and a partial award of costs is justified in the terms set out in the Costs Order below.

³ PPG: Paragraph: 051 Reference ID: 16-052-20140306

Costs Order

25. 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 Mr A W Al-Amood shall pay to the Council of the London Borough of Brent the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in: (1) preparing cross-examinations for the 12 witnesses that were listed by the appellant to give evidence at the Inquiry but did not appear; and (2) investing and preparing evidence in relation to changes to the external appearance of the basement which the appellant accepted when giving evidence in chief that he had undertaken. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Mr Al-Amood, whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR