



Costs Decision

Inquiry held on 23 January 2024

Site visit 23 January 2024

by Graham Dudley BA (Hons) Arch Dip Cons AA

an Inspector appointed by the Secretary of State

Decision date: 22 February 2024

Costs application in relation to Appeals Ref:

APP/T5150/C/23/3321125/26

59 and 63 Fernbank Avenue, Wembley HA0 2TT

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the London Borough of Brent for a partial award of costs against the appellant.
 - The inquiry was in connection with an appeal against the issuing of enforcement notices for the material change of use of the premises to HMOs, Flats and short-term lettings.
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Decision

1. The costs application is refused.

The submissions

2. The submissions for the Council and appellant were made at the inquiry.

Reasons

3. The Planning Practice Guidance 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.

Council's Case

4. Essentially the Council seeks a partial award of costs on grounds (b), (c) and (d). The Council say that appeals against these grounds should never have been raised in relation to flat use and short term lets or should have been withdrawn at a much earlier stage. The evidence for the allegation was overwhelming and the evidence produced by the appellant was weak and misleading. The notice was clear about the extent of operational development that was being targeted. The Council also noted the late production of the floor plans, which had they been provided earlier could have shortened the procedure.

Appellant's Case

5. The appellant was concerned because the statement of case referred to extensions and alterations without planning permission. The appellant would have needed to object to this. Therefore, the case made at the beginning was more comprehensive than need be. The appellant wanted to withdraw some grounds of appeal shortly after the Council's case was issued, but needed clarification of what operational development was involved. Once the extent of

the notice was clarified those grounds of appeal were withdrawn. The Council's case was also not well explained as to the 'problems' that were occurring. In addition, there has been no loss to the Council.

Reasons

6. I accept that at the beginning the appellant pursued grounds of appeal which could not later be sustained, and which were subsequently withdrawn. However, I also accept that there was some confusion in the Council's statement referring to operational development, although reading the steps in the enforcement notice, there was no requirement relating to external operational development, only internal. The appellant did fairly shortly after receiving the Council's case indicate it wished to withdraw the appeal on some grounds, but required confirmation that operational development was not included.
7. When the appellant received this confirmation, the grounds were withdrawn, and the appellant then sought a change of procedure to written representations, to which the Council objected.
8. It was clear towards the end of last year that the appellant wanted to withdraw some grounds of appeal, subject to the operational development confirmation. The Council would know it had not, and was not, including external development in the notice, so there should have been an expectation of withdrawal of those grounds. I would also add that the withdrawal of the grounds of appeal and late production of plans made the inquiry very much simpler and quicker.
9. I think the appellant has made mistakes in relation to the grounds of the appeal, partially based on unfounded concerns. However, the appellant has generally endeavoured to follow and engage with the appeal procedure in order to lessen the scope of the appeal. I do not consider that on balance this has amounted to unreasonable behaviour that has led to wasted expense for which an award of costs is justified.
10. I therefore find that there has not been unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance.

Graham Dudley

Planning Inspector