



Costs Decision

Inquiry Held on 14 May 2024

Site visit made on 14 May 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 28/05/2024

Costs application in relation to Appeal Ref: APP/T5150/C/23/3335123 65A and B Townsend Lane, London NW9 8BP

- 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 Daniel Albu 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 the material change of use to a mixed use as residential, builders/storage yard and business use and erection of buildings in the rear garden.
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Decision

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

The submissions for Mr Daniel Albu

2. It was submitted that the matters could have been resolved without the need for formal action had the Council followed its own enforcement policy and engaged with the appellant about the issues. The Council could have invited a planning application to regularise matters or negotiated an acceptable alternative scheme. It failed to do so and took no account of the appellant's personal circumstances.
3. The failure to investigate led to the service of a defective notice and this could have been avoided. The Council had no evidence of its own to controvert that of the appellant. It was also considered the Council wrongly attributed complaints about noise to the appeal site.
4. The notice did not set out that it was issued using the 'second bite' provision and this affected the statement of case. It was necessary to gather further evidence at the final comments stage, which was inconvenient and wasted time. Finally, the validity of the notice was questioned as the delegated report specified a longer compliance period.

The response by the Council of the London Borough of Brent

5. The Council responded that it first wrote to the appellant on 29 July 2020 advising of the probability of enforcement action. Since at least 13 August 2020, the Council has made it clear that it considers the unauthorised development to be unacceptable.
6. The second notice was issued having regard to the Inspector's findings on the first appeal. There was six months between the previous appeal decision and the issue of the current notice. The appellant had every opportunity to pursue a

planning application and/or make representations to the Council. The objections received were in relation to the appeal site. There was no error in this respect. The Council did not limit its evidence to only that which supported its case, as it has a duty to assist the Inquiry.

7. There is no requirement to state the notice was issued as a 'second bite' but the appellant is professionally represented, and this should have been clear. The notice was properly served under the delegated authority which rests with the Enforcement Manager. Established procedures were followed throughout.

Reasons

8. The Planning Practice Guidance (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.
9. The appellant was aware that the Council intended to pursue enforcement action against the breach of planning control from when the first notice was issued. That notice was quashed due to a misdescription in the allegation. However, it was likely that the Council would issue a second notice and the appellant had the opportunity to submit a planning application or seek pre-application advice before any further action was taken.
10. The Council did not encourage a retrospective application as it considered the development was unacceptable. It is not for the Council to take the lead in negotiating alternative schemes. As explained in my decision, I consider the notice identified the breach and the land affected correctly. The second notice was not defective.
11. The Council provided its own evidence in the form of aerial and 'street view' images, and photographs. These were intended to present a complete picture of events, which is not unreasonable. There is no evidence that the Council wrongly attributed complaints about a different site to the appellant's activities.
12. The second notice did not state it was issued in reliance on the provisions of Section 171B(4)(b) of the 1990 Act, but it was not necessary to do so. The appellant had the same solicitor throughout proceedings, and it would have been clear that the Council was relying on the 'second bite' provisions.
13. It is not apparent that the second notice was issued without the proper authority. The delegated report was countersigned by the Enforcement Manager, who holds the necessary delegated powers.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D Moore

Inspector