



Costs Decision

Inquiry held on 14 May 2024

Site visit made on 14 May 2024

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th June 2024

Costs application in relation to Appeal Ref: APP/N5090/C/23/3314429 Land at Flat 4, The Spinney, 22 Hendon Wood Lane, London NW7 4HR

- 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 GMP Fitzgerald for a full award of costs against the Council of the London Borough of Barnet.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission a material change of use of Flat 4 to use as a dwellinghouse.
 - This Decision considers only the matters set out in the costs application submitted on the morning of the inquiry, in conjunction with the Council's response and the applicant's final comments. The additional matters raised by the applicant when responding to the Costs application made by the Council were not made in accordance with the required and agreed procedures and to take them into account, even if relevant, would be unfair to the Council.
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DECISION

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

REASONS

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant identified the unreasonable behaviour by the Council as acting contrary to, or not following, well-established case law. More specifically, the applicant claimed the Council acted unreasonably in "seeking to re-litigate something that should have been litigated in the course of EN01", where EN01 refers to an enforcement notice issued by the Council on 24 May 2016 in relation to land at The Spinney. The applicant relied primarily on the rule in *Henderson v Henderson*, as explained in the extensive submissions during the course of the appeal proceedings.
4. I conclude in the appeal decision the Council is not seeking to re-litigate on alleged unauthorised development in relation to Flat 4. The applicant may consider the Council should have addressed any breaches of planning control at Flat 4 through the 2016 enforcement notice. However, the fact is the matters appearing to constitute the breach of planning control described in section 3 of the 2016 notice did not include any matter in relation to Flat 4.
5. Referring to the applicant's conclusions in the costs application, the lawfulness of the presence of Flat 4 was not settled by the previous appeal decision on the

2016 notice through the provision in section 173(11) of the 1990 Act. I explain why in the appeal decision under the ground (c) appeal, with reference to the relevant Court of Appeal authority. I conclude a breach of planning control took place.

6. In conclusion, the Council did not act contrary to well-established case law and unreasonable behaviour has not been demonstrated. Therefore unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Diane Lewis

INSPECTOR