



Costs Decisions

Inquiry Held on 4,5 and 6 June 2024

Site visit made on 5 June 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Costs application 1 in relation to Appeal Ref: APP/T5150/C/23/3333281 39 St Michaels Avenue, Wembley HA9 6SH

- 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 Mrs Marta Lazic 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 material change of use of the premises to residential and a business use involving the storing/hiring and use of business vehicles.
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Costs application 2 in relation to Appeal Ref: APP/T5150/C/23/3333281 39 St Michaels Avenue, Wembley HA9 6SH

- 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 Mrs Marta Lazic.
 - The inquiry was in connection with an appeal against an enforcement notice alleging Without planning permission, the material change of use of the premises to residential and a business use involving the storing/hiring and use of business vehicles.
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Costs application 1

Decision

1. The application for a full and partial award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant's case may be summarised as follows:
 - a) the service of the enforcement notice did not allow sufficient time to investigate the alleged breach of planning control, when there was no evidence that any serious harm was ongoing;

¹ Reference ID: 16-030-20140306

- b) the Council made no meaningful attempt to discuss the case with the appellant;
 - c) the Council failed to review its case in light of the now conceded accrued use fallback position, involving the continued use of the appeal site for the business, and amended its case as the appeal procedure evolved;
 - d) it failed to co-operate with the appellant in the production of the statement of common ground;
 - e) it failed to substantiate its case against the alleged mixed use of the site.
4. It is apparent that no substantive discussion took place between the parties prior to the service of the notice. It is unclear to me whether the Council was sufficiently proactive in pursuing such discussions or whether it misinterpreted any effort on the part of the appellant to engage with the Council. Notwithstanding this, there is no dispute that a breach of planning control occurred, and I am not persuaded from the evidence before me that any advanced discussion would have resulted in changes to the business operation that would have averted the service of a notice.
5. The Council accepted that an element of the business operation was lawful, whether due to the passage of time or because it was *de minimis*. It also set out at the Inquiry, for the first time, that its primary position was that a material change of use had occurred, from two planning units to a single planning unit involving a mixed use. I accept that had the Council undertaken further investigation it may have arrived at this position earlier in the process. However, setting aside how it happened, the Council maintained its case that a material change of use to a mixed use occurred around 2020.
6. Whilst the Council's position regarding the planning unit(s) came as a surprise at the beginning of the Inquiry, I am satisfied that the appellant was able to test that position and argue their case fully during the course of the event, which was not significantly prolonged as a result. Furthermore, despite the requirement to end the mixed use of the property, the Council had always accepted that a certain degree of business use there would not have been unlawful, such that the continuity of a degree of business use there was not in question. Therefore, whilst I agree it was unreasonable for the Council to introduce its change of stance at a late stage in the process, the argument that it has resulted in wasted expense to the appellant is not compelling.
7. It appears that the iterative process of producing the statement of common ground has been a source of frustration to both parties, with each accusing the other of obstructive behaviour. The document submitted provides a useful record of common ground. Whilst, in itself, it does not clarify areas of disagreement, I am satisfied that the differences between the parties are clear from the various evidential submissions.
8. The Council did not dispute the appellant's technical evidence to the Inquiry regarding noise disturbance and parking. However, this did not prevent the Council from reaching the view that it objected to the business use on such grounds, having regard to the professional judgment of officers.
9. Related to this, whilst I did not agree with the Council's stance, it was nevertheless reasonably possible to reach a view the business would result in disturbance and perceived harm to privacy due to increased activity from

comings and goings, albeit that the level of such harm was not quantifiable. So too it was potentially arguable that additional on-street parking demand, arising from the business, might result in inconvenience to residents having to park further away from their houses, with attendant impact on the character of the area; also that there would be harm to outlook due to the appearance of the business vehicles. The reliance on parking standards in the London Plan was not well founded, however I am not persuaded this went so far as to be unreasonable.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Application 2

Decision

11. The application for a partial award of costs is refused.

Reasons

12. The Council's case is that the appellant submitted to the Inquiry a large number of diary entries² a few days before the event was due to commence. There was no rationale offered for the introduction of this evidence. It was forced to spend unnecessary time and cost reviewing and assimilating the documents ahead of the Inquiry.
13. At the Inquiry the appellant explained that the diary entries related to days on which previously submitted photographic evidence had been taken, with a view to correlating evidence.
14. It would not have been clear to the parties until the commencement of the event that I was going to permit the documents to be submitted; furthermore the Council raised no objection at the event to the submission, and did not suggest it would be disadvantaged. The Council did not request an adjournment to allow the documents to be read, and in any event no significant time was spent at the Inquiry referring to the documentation.
15. It seems to me that had more time been needed to consider the late evidence at the Inquiry, there would have been scope for the appellant to explain the significance of particular diary entries, without all of the documentation needing to have been read in advance.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

R Merrett

INSPECTOR

² Some 91 documents, comprising around 1000 pages.