



Costs Decision

Inquiry held on 23 and 24 April 2024

Site visit made on 24 April 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2024

**Costs application in relation to Appeal Ref: APP/T5150/C/23/3329600
Flats 1-12 Affinity House, 66 Fourth Way, Wembley HA9 0BF, known as
Former 6-10 Hallmark Trading Centre, Fourth Way, Wembley HA9 0BF**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Amin Dharmeshkumar, NHMD Properties LLP for a full award of costs against the Council of the London Borough of Brent.
 - The inquiry was in connection with an appeal against the issue of an enforcement notice alleging, without planning permission, the material change of use of the land/premises to twelve flats.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr Amin Dharmeshkumar, NHMD Properties LLP

2. The costs application was submitted in writing following the Inquiry.

The response by the Council of the London Borough of Brent

3. The response was made in writing following the Inquiry.

Reasons

4. 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.
5. The applicant seeks a full award of costs, principally alleging that the Council has failed to exercise its development management responsibilities properly, including unreasonably withholding agreement to variations to the approved scheme that would have allegedly regularised the development that is subject to the enforcement notice.
6. It is also alleged that the Council's actions mirror the examples of unreasonable behaviour as set out in the PPG, namely:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations,
 - acting contrary to, or not following, well-established case law,
 - refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be

considered being narrowed, thus reducing the expense associated with the appeal, and

- not determining similar cases in a consistent manner.
7. The applicant refers to the numerous attempts made to seek an agreement to the proposed changes to the interior of the building, with the Council. As detailed in my decision on the appeal, contact was made on several occasions in order to seek such an agreement. No response was received from the Council. At the Inquiry, I specifically asked the Council's witness why it had issued no response to these attempts. I was told that one of the reasons to not agree to the proposed changes to the internal layout of the development was to try and compel the appellant to seek planning permission for the physical alterations to the building.
 8. I take this approach as seeking to "force the hand" of the appellant to apply for physical changes, by withholding agreement to any variation to the internal layout until the Council was satisfied that a formal application for the physical works was made. This is a blatantly unreasonable approach for the Council to adopt. The Council has stated that it would not have been expedient to serve an enforcement notice in respect of the physical works that were undertaken and so with this in mind, to attempt to force the appellant to seek retrospective planning permission for them by withholding agreement to the requested changes, is unconscionable. Particularly, as there appeared to be no planning reason to resist them and it was agreed that it was an improved layout.
 9. The Council's witness also stated that in a busy development management department such matters are often put "to the bottom of the pile." I again find this an unreasonable and inexcusable reason for not replying to the appellant's requests for written agreement to the proposed amendments to the internal arrangement. As such, the Council's behaviour in this matter can only be described as unreasonable. Having concluded this, I must now consider whether that unreasonable behaviour has resulted in unnecessary or wasted expense in the appeal process.
 10. In considering this, I am particularly conscious that the Council, in serving the notice and making its case, has also referred to the effect of the undertaking of physical works to the building on the ability to implement the development that was granted prior approval. Further to my findings on this matter when determining the appeal, I consider it highly likely that the Council would still have served an enforcement notice against the development, due to it considering that the unauthorised physical works to the building rendered it impossible to exercise the permitted development right as set out in Class O, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Consequently, a full award of costs is not justified as it is unlikely that the appeal could have been avoided.
 11. Nonetheless, the Council was unreasonable in its process of dealing with the matter of requesting the approval in writing to variations to the approved plan. This has resulted in the appellant having to deal with this matter as part of the appeal and incurring the costs that this would have involved.
 12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the matter of seeking written variation to the approved plan, and a partial award of costs is therefore warranted.

Costs Order

13. 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 the Council of the London Borough of Brent shall pay to Mr Amin Dharmeshkumar, NHMD Properties LLP, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the matter of seeking the written variation of the approved plans, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Allen

INSPECTOR