



Costs Decisions

Inquiry held on 8, 9 and 18 October 2024

Site visit made on 7 October 2024

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Costs applications in relation to Appeal Ref: APP/N5660/C/24/3345272 1 Angles Road, London SW16 2UU

- The application is made under the Town and Country Planning Act 1990 (as amended) (the 1990 Act), sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Mr Tahir Ahmad of Tripple 7 Limited for a full or partial award of costs against the Council of the London Borough of Lambeth.
 - Application B is made by the Council of the London Borough of Lambeth for a partial award of costs against Mr Tahir Ahmad of Tripple 7 Limited.
 - The inquiry was in connection with an appeal against an enforcement notice alleging (as corrected) the erection of a single storey building, and associated steps, and the use of that building as a single dwelling house.
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Application A - Decision

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

Application B – Decision

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

Application A

The submissions for Mr Tahir Ahmad

3. The costs application was submitted in writing. In brief, the full or partial award is sought because the Council's witness at the Inquiry indicated that the only evidence of actual use of the single storey building (the appeal building) was that it was occupied by the brother of the tenant of 1B Angles Road (No 1B). That evidence was obtained after the enforcement notice (EN) was issued. Therefore, the applicant considers that the Council acted unreasonably as they did not make adequate investigations to enable it to know how the single storey building was being used.

The response by the Council of the London Borough of Lambeth

4. The response was made in writing. The Council has stated that the Council's witness statement has been taken out of context and that the onus of proof is on the appellant in a ground (b) appeal. The Council does not accept that it did not carry out adequate investigations prior to issuing the EN. It has stated that it considered the evidence available to it, including the section 78 appeal

decision¹, and the applicant cannot point to any additional evidence that would have emerged and should have prevented the Council from issuing the notice.

Reasons

5. 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 or wasted expense in the appeal process.
6. Awards against a local planning authority may be either procedural or substantive. The PPG advises for enforcement action, local planning authorities must carry out adequate prior investigation². Local planning authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.
7. Section 172(1) of the 1990 Act provides that a local planning authority may issue an enforcement notice where *'it appears to them (a) that there has been a breach of planning control'*. It therefore does not have to be certain that a breach of planning control has occurred or that there are no grounds of appeal, it is for the appellant to establish such grounds. In this case, the Council did not serve a planning contravention notice (PCN) but appears to have relied upon the information supplied with the planning application submitted in 2022³ and the associated section 78 appeal decision. The Council's delegated report related to that planning application states that *'officers consider that there is a considerable lack of supporting information to help justify clearly that this residential 'annexe' is for ancillary purposes for 1B Angles Road.'* It goes on to cite the facilities enabling independent living, independent access and the strong likelihood that the appeal building could be used as a single dwelling.
8. The Inspector in the section 78 appeal decision indicated that *'The appellant states that the building is currently occupied for residential purposes. However, I have not been provided with any evidence of the nature of the occupation nor the specific need for additional living accommodation associated with the occupation of the main house (No. 1B). Whilst the appeal before me is for an outhouse, the appellant accepts that the building is capable of independent occupation.'* They go on to state that *'given the extent of the accommodation provided and the limited sharing of facilities with No. 1B, restricted only to access through a shared area, the proposal would be tantamount to an independent dwelling.'*
9. The appeal statement, submitted in connection with the section 78 appeal, stated that the appeal building *'is currently used as ancillary residential accommodation to 1B Angles Road'*. However, no further detail, such as any familial relationship between the occupiers, any care provided for the occupiers of either the appeal building or No 1B by the others, was provided to indicate how the appeal building was functioning as ancillary accommodation. Moreover, it was also stated that the *'outbuilding could be used as an independent unit of accommodation'*.

¹ Ref No: APP/N5660/W/23/3327280

² Paragraph: 048 Reference ID: 16-048-20140306

³ Ref No: 22/04569/FUL

10. I acknowledge that further investigation by the Council, including the issuing of a PCN, may have identified more robustly whether the appeal building was being used as a single dwelling house. However, I have found within my substantive decision that *'yet, the onus of proof is on the appellant and in my judgement, the evidence before me is insufficiently precise and unambiguous to show on the balance of probabilities and as a matter of fact and degree that the appeal building was not in use as a single dwelling house prior to the EN being issued. As such, the appeal on ground (b) fails'*. Whilst it is evident that the applicant is unhappy about the Council's approach to the investigation, in my judgement, there is little to indicate that further investigation could have avoided the issuing of the EN in respect of the use of the appeal building.
11. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Application B

The submissions for the Council of the London Borough of Lambeth

12. The costs application was submitted in writing. In summary, the Council submits that Mr Ahmad has exhibited unreasonable behaviour in a substantive sense by pursuing the ground (b) and (d) appeals. In regard to the ground (b) and (d) appeals in respect of the material change of use it considers that Mr Ahmad has failed to produce evidence that would normally be available to substantiate a case in these circumstances. Additionally, with respect of the operational development ground (d) appeal that he has ignored a well-established principle of law. It considers that this has caused the Council to incur unnecessary expense.

The response by Mr Tahir Ahmad

13. The response was made in writing and in brief he states that his oral evidence at the Inquiry related to a tenancy agreement, the letting particulars and that the appeal building has no independent access, services, postbox, doorbell and bins. There was no appeal on ground (d) with regard to the material change of use. The principle in caselaw was not overlooked and evidence was submitted to demonstrate that the appeal building was substantially complete for the purpose it was intended but then was temporarily used for builders' welfare.

Reasons

14. As stated previously, parties in planning appeals normally meet their own expenses. However, the 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.
15. Awards against an appellant may be either procedural or substantive. The PPG states that an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding. It also states that this may occur when in enforcement appeals, the onus of proof on matters of fact is on the appellant⁴.

⁴ Paragraph: 053 Reference ID: 16-053-20140306

16. The appellant provided evidence with regards to the letting details of No 1B which cited the appeal building providing 'annexe' accommodation, his oral evidence indicated that he believed the brother of the tenant of No 1B occupied the appeal building and that there was only one tenancy agreement. The evidence submitted by him also includes the physical factors, such as no doorbell, which he believes indicate that the use of the appeal building is not a single dwelling house. The appellant's evidence highlighted the physical factors and the stated familial link between the occupiers of the appeal building and No 1B. I acknowledge that evidence from the tenants of the appeal building and No 1B could have indicated how the functional links between the occupiers ensure the use of the appeal building is part and parcel of the residential use No 1B. Moreover, as stated above, in my substantive decision I have found that the ground b fails. Yet that is a matter of judgement. Additionally, whether a detached building that has all the facilities for day-to-day living is occupied and used as part and parcel of the main dwelling house is a relatively complex matter.
17. The appellant also concentrated on the Council's evidence with regard to the use of the appeal building. However, in a ground (b) appeal the onus is on the appellant to show why the matters alleged have not occurred. Nonetheless, the appellant has set out their reasons for drawing the conclusions they have and provided evidence to the Inquiry. While the appellant has not succeeded in their appeal under ground (b), they have exercised their right of appeal and were not unreasonable in doing so.
18. In relation to the appellant's ground (d) appeal it is clear from the submitted evidence that this ground of appeal was restricted to the operational development rather than the material change of use. Therefore, the lack of evidence regarding the material change of use under this ground is not unreasonable. The evidence provided with regard to the operational development, including the witnesses that appeared at the Inquiry, was based on what the appellant considered had happened on the site. It's a matter of judgement whether the ground (d) appeal as set out by the appellant is contrary to established case law. Furthermore, it involves fairly complex issues in respect of the interpretation of that caselaw. There is little to indicate that on that basis the ground of appeal had no reasonable prospect of success. Therefore, whilst I have found that the ground (d) appeal fails the appellant did not act unreasonably by submitting this ground of appeal.
19. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D Boffin

INSPECTOR