
Costs Decision

Inquiry held on 20 August, 3 October, and 17 October 2024

Site Visit made on 20 August 2024

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2025

Costs application in relation to Appeal Refs: APP/N5660/C/24/3342228, APP/N35660/C/24/3342231

Nos 7 and 9 Rita Road, London SW8 1JX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Lambeth for an award of costs against Nadeen Siddiqui (Henley Beech Ltd) and Sophia Amerjee (Ascot Gate Ltd), respectively.
 - The appeals were against the Council's decision to issue separate enforcement notices against nos 7 and 9 Rita due to an alleged material change of use from 3 to 7 self-contained flats.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) 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. This costs application is made by the Council in respect of both procedural and substantive grounds. Regarding the procedural element, it is said that the appellants delayed the submission of its full case, fresh evidence was introduced at a late stage causing the Council additional expense, and providing information that was inaccurate or untrue. The third point also forms the basis of the substantive claim. However, given my findings that, on balance, the appellants proved their case, I discount the substantive claim.
4. The appeals had been lodged on 9 April 2024, and the appellants' Statement of Case was submitted by their agent, Magenta Planning, on 3 June. Proofs of Evidence from both parties were required by 20 July but, during the appeal process the appellants' agent mentioned that applications for Certificates of Lawfulness were being drawn up for submission to the Council and this might negate the need for the appeal. As such, he requested that the forthcoming Inquiry be postponed. However, as there was no guarantee that these applications would be successful, PINS declined this request.

5. In the event the said applications were not submitted until 22 July, when PINS, similarly received a series of arch-lever files which contained evidence relating to the ground (d) appeals lodged. Nonetheless, the submission to PINS was still incomplete as no actual Proof of Evidence had been included. In the event, as it would appear that this was the first time that the Council had seen this evidence, and following requests by both main parties, I extended the deadline for the Proofs from both parties until 30 July. These Proofs were duly received but, the appellant's evidence was still incomplete as, on 15 August, fourteen significant documents were e-mailed to PINS. This, in turn, rendered the Council's rebuttal Statement, received on 12 August, out of date.
6. At the Case Management Conference on 2 August, I indicated that due to the number of documents contained within the arch-lever files, and the need to explore this at the Inquiry, the scheduled single day, might be insufficient and the Council was alerted that a second day would be necessary. Accordingly, it would now sit on both Tuesday 20 and Wednesday 21 August.
7. A further request from the appellants to have the Inquiry postponed as their agent had inexplicably stepped down from the case was considered by PINS but, as I identified that the evidence submitted should for the ground (d) appeal should speak for itself, and was the lynchpin of the appellants' case the request was again declined.
8. The Inquiry duly opened, as scheduled, but counsel had only been instructed to appear for one day, and as a witness was also seemingly unavailable on the Tuesday, I felt it necessary in the interests of fairness - I recall saying that otherwise, I would not be able to do justice to the appellants' case - to adjourn the Inquiry and reconvene at a later date. The proceedings actually necessitated the Inquiry reconvening on a third day, but the first adjournment would have caused inconvenience to the Council's advocate, and a likely rescheduling of work.
9. Additional evidence was also advanced by the appellant during the proceedings, but new, and relevant, information was also provided by interested parties, and all parties were able to respond. I was satisfied that such was necessary to aid the Inquiry.
10. In my main decision I mentioned that the appellants' evidence in terms of which tenants paid what in rent, and when, was not particularly coherent due to everything being set down in a single ledger. In cross-examination Naddeem Sadiq said ledgers existed for each individual flat, but this had not been submitted as he did not think it was needed, and also due to the amount of paperwork. In fact, the majority of the mountain of paperwork was due to the number of heavily redacted bank statements which were of little value as they could not be realistically cross-referenced with the ledger.
11. Taking account of all the above, I consider that, having lodged the appeal in April 2024 – upon which immunity from enforcement action was being claimed – the appellants had had sufficient time to put together a clear, cogent, and full submission to discharge the burden of proof. In the event the evidence required both interpretation and certain assumptions having to be made by me as to the reality of the situation. This worked in the appellants' favour.
12. Had the evidence been produced at an earlier point, and this could have equally applied to the s191 applications had they been made at an earlier

point, then I am convinced that the appeal could have been avoided. If so, it would also have meant that a new agent could have been found at an earlier stage should difficulties had similarly arisen. However, I suspect that Magenta would have continued with the case in such circumstances.

13. Accordingly, I must conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated and that a partial award of costs is justified in the circumstances.

Costs Order

14. 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 Nadeem Siddiqi (Henley Beech Ltd) and Sophia Amejee (Ascot Gate Ltd) shall pay to the Council of the London Borough of Lambeth (the applicant) the costs of the appeal proceedings, limited to those costs incurred in preparing for the scheduled Inquiry, and the Counsel's costs in this particular regard; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Nadeem Siddiqi (Henley Beech Ltd) and Sophia Amejee (Ascot Gate Ltd), to whom copies of this decision have been sent, details of those costs with a view to reaching agreement as to the amount.

Timothy C King

INSPECTOR