
Costs Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Costs application in relation to Appeal Ref: APP/T5150/X/23/3328438

Flat 1A, 88 Brook Road, Brent, London NW2 7DU

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by J D Devine of KPD Realty Ltd for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of a certificate of lawful use or development for the use as a self contained flat within Use Class C3.
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Decision

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

The Submissions

2. The reasons given by the cost applicant (the appellant) for the costs application are summarised as follows:
 - The Council overlooked the evidence submitted;
 - The Council failed to provide any evidence to contradict the appellant's evidence;
 - The Council ignored its own evidence (i.e. the record of housing benefit payments); and
 - The Council did not properly apply the relevant test of the evidence.
3. The Council did not respond to the costs application.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (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. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs application include:
 - 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;
 - failure to produce evidence to substantiate each reason for refusal on appeal; and

- acting contrary to, or not following, well-established case law.
6. Although some of these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended, the principles of these can be applied to this case.
 7. The principal element of the appellant's evidence is a statutory declaration from the current occupier of the flat in question, who says that they have lived in the flat as their own private dwelling since 15 June 2015. I have found the statutory declaration to be detailed, precise and unambiguous in how it describes the flat in question, how rent is paid, and the supply of electricity and gas to the flat. It also provides important detail regarding the housing benefit payments, as well as referring to the tenancy agreements. It provides a credible explanation for the lack of tenancy agreements for each year of occupation.
 8. Having regard to the above, settled case law has established that such evidence should not be rejected simply because it is not corroborated. The statutory declaration has, however, been corroborated by supporting evidence, which includes gas and electricity meter records, housing benefit records, and tenancy agreements. The Council suggest that there are gaps in this evidence, but in doing so has failed to consider this evidence alongside the statutory declaration. Rather, it appears to have considered this evidence in isolation. Aside from one discrepancy in the start of the housing benefit payments for the flat, I have concluded that all of this supporting evidence does nothing but corroborate the statement made in the statutory declaration. I consider it unreasonable to conclude otherwise.
 9. I have been unable to identify any evidence from the Council that contradicts that of the appellant. The Council's case falls substantially short of making the appellant's version of events less than probable.
 10. I have concluded that the contents of the statutory declaration carry significant weight in this case. To conclude otherwise would be unreasonable, in my judgement. This is because it is detailed, precise and unambiguous; it is corroborated by documents it refers to; it is not contradicted by other evidence; and there are sanctions that could be imposed, should it contain false or misleading evidence.
 11. The standard of proof in an LDC case is the civil standard, i.e. 'the balance of probabilities', rather than the criminal standard, i.e. 'beyond reasonable doubt'. Guidance on the application of the test is set out in the Planning Practice Guidance on Lawful development certificates. Whilst the Council has identified the correct standard of proof in its evidence, I cannot conclude that it has properly applied it, in accordance with the guidance. Having regard to the evidence that was before the Council in this case, I consider it unreasonable for the Council to have concluded anything other than that the use for which the LDC was sought is more likely than not to have been lawful on the date the LDC application was made.
 12. I have noted in my decision the Council's concerns with regard to the use of the remainder of 88 Brook Road. As the LDC application clearly relates to Flat 1A only, these matters fall outside of the remit of the LDC application and appeal, and have no implications for the lawfulness of the use of Flat 1A.

13. All things considered, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 the Council of the London Borough of Brent shall pay to KPD Realty Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council of the London Borough of Brent, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR