Costs Decisions

Inquiry held on 26 and 27 November and 3 December 2024

Site visit made on 28 November 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Costs application in relation to: Appeal A Ref: APP/X5210/C/24/3345281
Land at: 258 Belsize Road, London NW6 4BT

- 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 Mr Jeremy Pow of Oakenfield Enterprises Ltd for a full award of costs against the Council of the London Borough of Camden.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission the material change of use of the Property from 2 x office blocks to serviced apartments for short term lets (Sui Generis).

Costs application in relation to: Appeal B Ref: APP/X5210/C/24/3345282
Land at: 254-256 Belsize Road, London NW6 4BT

- 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 Mr Jeremy Pow of Empire Communications Ltd for a full award of costs against the Council of the London Borough of Camden.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission the material change of use of the Property from 2 x office blocks to serviced apartments for short term lets (Sui Generis).

The submissions for Mr Jeremy Pow

1. The applicants were represented by a single team and made a single case.
2. The costs applications were submitted in writing in the first instance, and in response to the Council's comments, with additional points made orally at the inquiry.
3. The applicants consider, firstly, that the Council's approach to short-term letting was completely wrong, to the point of unreasonableness, ignoring the legislation and well-established law on Use Class C3 dwellinghouses.
4. Secondly, that the Council unreasonably contradict their 2019 acceptance that the use of 258 was as Use Class C3, and do so without any further evidence or any other reason.
5. Thirdly, the Council has issued an enforcement notice which is self-evidently unlawful and flawed, cutting through apartments.

The response by the Council of the London Borough of Camden

6. The Council's response to the applicants' costs applications was made in writing in the first instance, with additional points made orally at the inquiry.

7. Firstly, the Council considers its evidence as a whole demonstrates the site is in use as serviced apartments for short term lets. Even if the appeals on ground (b) succeed, the Council has not acted unreasonably. That that could only arise if the Council's case was so hopeless as to be unreasonable, which is plainly not the case.

8. Secondly, that the 2019 investigation concluded that although there was evidence of short-term letting, there was insufficient evidence of a breach of section 25A of the Greater London Council (General Powers) Act 1973 ("the 1973 Act"). It did not make a positive finding of a lawful C3 use or for short-term letting. And the investigation which led to the issue of the enforcement notice at appeal considered matters the earlier investigation did not, and looked at different matters, such as the lawfulness of the underlying use of the site. The first was light touch and narrow in focus, and the second was broader and more detailed. Furthermore, that the focus of the appeal was not on whether section 25A of the 1973 Act had been breached, and the earlier investigation is of little assistance to the issues in the appeal.

9. Thirdly, an Inspector cannot go on to consider whether the Notice is unlawful on other grounds where it is not alleged the Notice is a nullity. And in any event, the error in the plan attached to the Notice can be corrected.

Reasons

10. 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.

The approach to short-term letting:

11. In my appeal decision I considered that 'temporary sleeping accommodation' and 'short-term letting' were not necessarily the same thing. I found that, with the evidence before the Inquiry, in addition to those lettings of less than 90 days, many of those of 90 days or more were also likely to have been short-term letting. I considered it likely the apartments were dwellinghouses, on the basis that they were equipped with the facilities required for day-to-day private domestic existence in the *Gravesham* sense. However, I also found the overall character of the use of the Land was one of a *sui generis* use as serviced apartments for short term letting, and that the use was materially different to use as C3 dwellinghouses.

12. Having found that the alleged unauthorised use had occurred, it follows that the Council's approach was not unreasonable.

The Council's two investigations:

13. The officer report into the 2019 investigation was brief and focussed on evidence of whether 'the 90 day limit' had been exceeded, with reference to the Deregulation Bill which brought in sections 25 and 25A of the 1973 Act. It also related only to building 258-262, much of which is outside the Land subject to the Notice. The report concluded there was evidence of short-term letting at the site but that it had proven difficult to collate enough evidence to substantiate that the 90 day limit had been breached in respect of any of the units. However, it also stated that if further evidence was obtained to substantiate there was a breach, then the case would be re-opened for further investigation.

14. The Council's email of 25 January 2019 to Castle Trading Ltd, operator of the buildings, stated the Council could find no breach of the 90 day limit for short term letting being breached at the site. That is consistent with the officer report, whether or not the report was available to the operator at the time. I have seen no evidence that the investigation concluded the use occurring was a Class C3 dwellinghouse use. Neither did the report or the Council's email amount to a grant of a certificate of lawfulness under s191 of the 1990 Act.

15. The subsequent investigation in 2023 was more comprehensive and detailed, considered all the units within both buildings, and investigated whether C3 use of the buildings had occurred with planning permission under a development order. It was not unreasonable for the Council to carry out a further investigation, four years after the first one, with a broader scope and a more thorough look at all the relevant issues.

The integrity of the enforcement notice:

16. The building now known as 258 has been converted along with 260-262 but each retains a separate title with the Land Registry. The building has been substantially remodelled internally, and the layout does not reflect the distinction in the legal titles.

17. I considered this matter in detail in my appeal decision. Although the Land subject to the Notice divides some apartments and I found I could not enlarge the area subject to the Notice without injustice, I did not find the Notice to be invalid in this respect.

18. It therefore follows that the Council was not unreasonable in limiting the Land subject to the Notice to 258 and 254-256, even if it did so inadvertently.

Conclusion

19. Unreasonable behaviour resulting in unnecessary or wasted expense has therefore not occurred and an award of costs is not warranted.

Decisions

20. The application for an award of costs by Mr Jeremy Pow of Oakenfield Enterprises Ltd is refused.

21. The application for an award of costs Mr Jeremy Pow of Empire Communications Ltd is refused.

Peter White

INSPECTOR