
Costs Decision

Site visit – none made

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Costs application in relation to Appeal Ref: APP/T5150/C/24/3350714 45 Chaplin Road, London NW2 5PP

- 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 Brent for a partial award of costs against SAB Healthcare Limited.
 - The appeal was against the Council's decision to serve an enforcement notice against an alleged unauthorised change of use at the property.
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Decision

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

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. The Council (hereafter referred to as the applicant) considers that the appellant (SAB Healthcare Ltd) behaved unreasonably on both procedural and substantive grounds. Procedurally, the applicant appears to question why the appeals were made in the first place, but, having been lodged, were withdrawn at such a late stage in the appeal process. Substantively – and here there is some crossover – the applicant's view is that the appeals made on grounds (b), (c) and also (a) had no prospect of success.
4. First and foremost, when faced with the enforcement notice the appellant, in protecting his position, had little choice but to appeal its issue. Further, in July 2024, when the notice was issued, the decision on an application made to the Council, in April 2024, claiming lawful development rights for the property's use as eight independent residential units was still pending. I consider it would have been prudent for the Council to have made a decision on this application before issuing the enforcement notice. In the event the decision was not made until September 2004, and an appeal quickly followed, which was then conjoined with the enforcement appeal which had been lodged the previous month.
5. Leaving aside the enforcement notice for the moment, from the outset I considered that the LDC appeal was paramount and this explains the tenor and purpose of my Pre-Inquiry note which I prepared following my reading of the

background material. In contrast, the initial grounds of appeal put forward by the appellant appeared to be based more on technicalities rather than substance but, given that these grounds were subsequently withdrawn the evidence was never tested and I shall not comment further. Neither is it necessary for me to make a detailed analysis of the appellant's responses to the Planning Contravention Notices served.

6. At that stage it is the Council's role to amass the evidence by interpreting the responses made and, accordingly, take any necessary action. The Council's reference to these remains a matter between the two main parties. Instead, the lynchpin of the s174 appeal – indeed, of what remained of the appeals – related to the validity of the enforcement notice itself.
7. On the face of it, the reasons for the notice's dual allegation are not instantly apparent until one gives thought to the manner in which the property appears to have been used. The appellant, given his longstanding involvement with the property would doubtless have been fully aware of the enforcement notice's implications, and what was required to remedy this and why.
8. Indeed, the appellant's agent also had previous involvement, as his firm apparently prepared a planning application (ref 19/1154) dated 26 March 2019. This may have explained the approach taken with the representations made on the current appeal but, that aside, what is not clear to me is why the Council, in the face of my initial advice, decided to steadfastly stick with the dual allegation and its respective requirements, rather than attempting to simplify the enforcement notice.
9. I note that a meeting took place on 10 December last between the parties' representatives whereby, I understand, the prospect of amending the wording of the enforcement notice was discussed, but no agreement was reached. However, it is the Council's notice and it was up to them to take the lead here. I see little reason why, if the Council had properly reconsidered the breach of planning control involved, it was decided to leave the notice unaltered. This stance would have only prolonged the Inquiry proceedings.
10. In the above regard, the appellant clearly reconsidered the many aspects of the case and I must give credit here for the withdrawal of the various appeals. Admittedly, in the event, the appellant placed too much emphasis on the consideration that the enforcement notice was invalid, which I have discussed in detail in my main decision, but I must disagree with the Council's claim that the appeals were withdrawn at too late a stage.
11. There was still a few weeks before the Inquiry was scheduled to open, the Council's case had obviously already been largely compiled and, realistically, I would doubt whether the withdrawals, necessitating the potential rebuttal of the appellant's invalidity claims, would have amounted to a significant amount of additional work.
12. To my mind, from the representations made, the problems encountered are due to an apparent lack of communication between the two parties, and I am unable to apportion any blame in this regard.
13. For the reasons given above I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

14. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR