
Costs Decision

Site visit made on 29 April 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 July 2025

Costs application in relation to Appeal Ref: APP/W1905/C/23/3318493

41 Cameron Drive, Waltham Cross, Hertfordshire EN8 8BP

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Shola Omatsola Antony Edegbele for a full award of costs against Broxbourne Borough Council.
 - The appeal was against an enforcement notice alleging the material change of use of a single dwellinghouse to two dwellinghouses.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises¹ 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. Unreasonable behaviour by a Local Planning Authority can either be procedural² – relating to the process, or substantive³ – relating to issues arising from the merits of the appeal.
3. The applicant's case is made on substantive grounds. In particular, the applicant is of the view that the Council acted unreasonably by failing to produce evidence to substantiate its reasons for issuing the notice, has made vague, generalised, and inaccurate assertions which were unsupported by any objective analysis, has not followed well established case law, and had not reviewed its case following receipt of the appeal.
4. The applicant considers that the issuing of the enforcement notice was unreasonable as the breach of planning control had ceased in late 2022, and therefore on the date the notice was issued it did not represent the factual position at that time. However, as can be seen by the appeal decision the fact that the breach had been remedied prior to the issue of the notice does not render the Council's position as unfounded or misconceived.
5. It is not uncommon for there to be a gap between that date on which a Council identifies a breach and the date on which the notice is served. The Council contend that they carried out an investigation and gathered evidence which included site visits, locating an online website advertising a flat at the property for rent, and

¹ PPG Paragraph: 030 Reference ID: 16-030-20140306

² PPG Paragraph: 047 Reference ID: 16-047-20140306

³ PPG Paragraph: 049 Reference ID: 16-049-20140306

reviewing the planning history which included an application for a Lawful Development Certificate that sought to confirm that the existing use of the property as two planning units (two flats) was lawful. From the available evidence, I am satisfied that the Council undertook an adequate investigation and were satisfied, in their view, that a breach of planning control had occurred.

6. It subsequently appears that, between the Council's site visit in October 2022 and the notice being issued in February 2023, the appellant had remedied the breach. The Council also state that despite communications taking place between the parties, at no point before the enforcement notice was issued did the applicant advise the Council that the breach had been remedied. The applicant has provided no evidence to contradict the Council's version of events.
7. Whilst it may have been preferable for the Council to have issued the notice sooner, in my view the Council's actions do not represent unreasonable behaviour. The Council undertook an adequate investigation and based on the evidence before them, concluded that a breach of planning control had occurred. There is also no evidence before me to suggest that the Council knew that the breach had been remedied before issuing the notice.
8. The applicant also draws reference to an email sent by the Council's Principal Compliance Officer which refers to an "annexe use". Whether, as the Council allege, this was a typing error or not, the third paragraph of the same email makes it clear that following an investigation the Council had identified what it considered to be a breach of planning control. Although I accept that the use of the phrase "annexe use" may have led to confusion, the Council's stance did not change and it did not ultimately result in any unnecessary or wasted expense being incurred by the applicant.
9. Finally, the applicant contends that the Council failed to follow established case law with the case of *Uttlesford*⁴ being referred to in the appeal submissions. The judge in *Uttlesford* considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling. Instead, it would be a matter of fact and degree.
10. However, it is clear in this instance that the Council considered, as a matter of fact and degree, that a separate planning unit had been created resulting in the material change of use of the dwellinghouse to two dwellinghouses. Furthermore, the applicant accepts that the breach of planning control had occurred, albeit the breach had subsequently ceased by the date on which the notice was issued.

Conclusion

11. Therefore, for the reasons set out above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

David Jones

INSPECTOR

⁴ *Uttlesford DC v SSE & White* [1992] JPL 171