



Costs Decision

Virtual Inquiry held on 26 March 2025 and 3 April 2025

Site visit made on 4 April 2025

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 December 2025

Costs application in relation to Appeal Ref: APP/T5150/C/24/3355374

23 Rose Glen, London, NW9 0JR

- 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 Ms Soheila Bahador for a full award of costs against the Council of the London Borough of Brent.
 - The inquiry was in connection with an appeal against an enforcement notice alleging 'without planning permission, the material change of use of the outbuilding in the far end of the rear garden to a separate residential accommodation ("the unauthorised change of use").
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Decision

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

The submissions for Ms Soheila Bahador

2. The costs application was submitted in writing.

The response by the Council of the London Borough of Brent

3. The response was made in writing.

Reasons

4. 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. Awards against a party may be either procedural or substantive. The applicant has raised matters concerning the substance of the matter under appeal, as well as concern regarding the stage at which (alleged) concessions were made. Their application is therefore procedural and substantive.

Procedural

5. The Applicant raises concern that the Respondent left it to the Case Management Conference (CMC) stage to effectively concede the grounds (a) and (f) appeals. However, the Respondent has not conceded the ground (a) and in respect of the ground (f), the Respondent's concession relates to the requirement to remove fixtures and fittings and to remove associated waste and debris and materials (contrary to the Applicant's suggestion, the notice does not require the demolition of the building). The Respondent confirmed this during the CMC and in the Statement of Common Ground. This concession was made at a relatively early stage and meant that Inquiry time was not required to deal with this matter. This, in my view, was reasonable.

Substantive

6. The PPG advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
7. Examples of unreasonable behaviour also 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;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - acting contrary to/not following well-established caselaw.
8. The Applicant takes issue with the adequacy and diligence of the Respondent's investigation prior to issuing an enforcement notice and in particular, cites a failure by the Respondent to issue a planning contravention notice (PCN). However, the decision as to whether to serve a PCN is at the discretion of the Respondent and whilst an effective enforcement action relies upon accurate information about an alleged breach, a PCN may not always be necessary if comprehensive information about the alleged breach of planning control is readily available from other records held by the Respondent, their site visits or other publicly available information.
9. In this instance, I note that the Applicant had already submitted applications for a lawful development certificate (LDC) on two occasions which the Respondent had refused. The Applicant has not demonstrated what additional information would have been revealed through the Respondent serving a PCN and it has not been shown that a more diligent investigation could have avoided a need to serve the enforcement notice or ensured its accuracy.
10. The Applicant suggests it was unreasonable for the Respondent to refuse the LDC applications and to issue the enforcement notice in light of the personal information disclosed by the Applicant. It is further alleged that the Respondent failed to properly consider the nature of the interdependence and relationship between the Applicant and their daughter. The applicant has not appealed the LDC applications.
11. All parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in an Inspector's consideration of whether or not costs should be awarded. I have considered the circumstances which led to, and which continued to exist whilst the Applicant's daughter occupied the outbuilding and, as can be seen from my decision letter, I have found that this

- period of occupation interrupted the continuous use of the outbuilding as a separate dwelling. I do not consider the Respondent was unreasonable in this regard.
12. The Applicant raises concern regarding the Respondent's request for metadata of the tenancy agreements and rental payments, despite the key issue on its own case being the Applicant's daughter's occupation when no such tenancy agreement was relied upon. However, the Respondent's concern is not limited to the period of occupation by the daughter. The Respondent points to conflict in the evidence and so it was not unreasonable for the Respondent to request metadata to enable it to verify documentation relied upon. In an appeal under ground (d) the burden of proof is on the Applicant to make their case, to the civil standard, which is the balance of probabilities. It was for the Applicant to provide originals, not for the Respondent to trawl through previous applications to see whether it held original documents or not.
 13. The Applicant raises concern that the Respondent's questioning was inappropriately suspicious. However, the Respondent has provided evidence and information which appears to contradict the Applicant's case and so it is right that their evidence should be tested during an Inquiry. While it appears that the Respondent has sought to further criticise the Applicant's documentary evidence through its costs response, the thrust of their point appears to be that there were anomalies in the Applicant's evidence.
 14. In terms of the Respondent's comment regarding the tenancy agreements and '*Her description of recording contemporary photographs of the TAs handed to tenants bearing her signature is at odds with the Appellant's 10/3/25 email to Pins...*', in the interests of fairness, I agree that this should have been raised by the Respondent in cross examination, or elsewhere within its evidence. Whilst the point was only brought to my attention within the Respondent's closing submissions, the appeal didn't turn on this point and so the appeal would still have been necessary.
 15. The Applicant raises concern regarding the Respondent's suggestion that the Applicant knows the difference between 'ancillary' and 'separate' accommodation and its questioning of the Applicant on this matter during the Inquiry. The purpose of the Inquiry is to test the Applicant's evidence; the Respondent was not unreasonable in asking questions regarding the Applicant's understanding of 'ancillary' and 'separate'.
 16. In my view, it was reasonable for the Respondent to wish to test the Applicant's evidence regarding the non-payment of rent. While the Covid-19 pandemic is likely to have impacted the ability of an individual to pay rent and for a landlord to evict a tenant, it cannot simply be assumed that this is the reason for any gaps in the evidence. The Council was not unreasonable in seeking clarity on such matters.
 17. I consider the Inquiry was necessary to enable the evidence to be tested. Furthermore, the decision regarding the procedure was made by the Planning Inspectorate, having regard to the guidance 'Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals'. Significantly, I have found that the appellant's appeal under grounds (d) and (a) should fail and I have upheld the notice. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

E Brownless - INSPECTOR