Planning Inspectorate

Costs Decision

Site visit made on 27 October 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2026

Costs application in relation to Appeal Ref: APP/G5180/C/25/3360747
76 Crofton Lane, Orpington, BR5 1HD

- 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 Basant Mertia for a full award of costs against the Council of the London Borough of Bromley.
- The appeal was against an enforcement notice alleging the material change of use of the building from single dwellinghouse to two flats.

Decision

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

Reasons

2. 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.

3. The applicant has set out several procedural and substantive concerns relating to the sequence of events that occurred leading up to, and after the enforcement notice was issued, which he considers amount to unreasonable behaviour by the Council.

4. There is no evidence of the Council's Planning or Enforcement Officers undertaking an internal inspection of the premises, to establish whether a breach of planning control had occurred, in the 6 months between July 2024 and them issuing the Enforcement Notice (EN) in January 2025. There is also no explanation as to what had changed or had led the Council to change its view between confirming by email in May 2024 that no breach had occurred and issuing the EN. The courts have held that an EN should not be issued in anticipation of a possible future breach, what is alleged must have taken place at some time[1].

5. Whilst I understand that a Planning Contravention Notice was sent to the appeal property, this is not the applicant's home address and therefore he did not receive this or have a chance to respond to it, prior to receiving the EN. Upon receiving the EN, the applicant promptly notified the Council of factual errors and the risk of a costs application. Although the Council inspected the property shortly after issuing the EN and observed that the first floor was not occupied and had no kitchen or cooking facilities enabling it to be used as a self-contained flat, the EN alleging that a material change of use to two separate self-contained flats had occurred was not withdrawn.

[1] *R v Rochester-upon-Medway CC ex parte Hobday* [1990] JPL 17

6. The Council's request for tenancy information, failure to share its site photographs with the applicant who would in any event be aware of what his property looks like, failure to provide electrical certificates and letting details relating to the premises that the owner would have been aware of, and to agree a statement of common ground, which is not a requirement, does not amount to unreasonable behaviour. There is also no evidence to demonstrate that the Council tried to conceal the marketing of the property as a single dwelling, and it was not necessary for the applicant to spend time rebutting representations made by third parties pertaining to the planning merits of the allegation, given that the only ground of appeal was that the breach had not occurred as a matter of fact.

7. However, the Council behaved unreasonably in issuing a notice for a matter that had not yet occurred. It is well established by case law[2] that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for day-to-day private domestic existence, e.g. a toilet, washing and cooking facilities. The Council acted contrary to this and disregarded its own similar definition of a self-contained dwelling, as set out in its adopted local plan. The Council also failed to produce evidence to substantiate the alleged breach that a material change of use had occurred and has instead focussed on occupancy of part of the property and speculative allegations of future intent.

8. Better communication and engagement with the applicant, together with a further visit prior to issuing the EN, may have resulted in a different course of action by both parties. The Council's actions resulted in an unnecessary appeal the preparation, submission and ongoing review of which, together with the application for costs, has resulted in expense to the applicant.

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred. As the whole appeal could have been avoided, a full award of costs is warranted.

Costs Order

10. 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 Bromley shall pay to Mr Basant Mertia, 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.

11. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Bartlett

INSPECTOR

[2] *Gravesham BC v SSE & O'Brien* [1983] JPL 306