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## Costs Decision

Inquiry Held on 8 August 2017

Site visit made on 8 August 2017

**by Stephen Brown MA(Cantab) DipArch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 26 October 2017**

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### **Costs application in relation to Appeal Ref: APP/T5150/C/16/3155429 19 Corringham Road, Wembley HA9 9PX**

- 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 The Council of the London Borough of Brent for a full award of costs against Mr Rehan Sheikh.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission the material change of use of the premises to one self-contained flat and one House in Multiple Occupation (HMO) for more than six residents.

**Summary of decision: the application is allowed, as set out in the Formal Decision and Costs Order below.**

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#### **The submissions for the Council**

1. The appellant is well versed in enforcement proceedings, and is a professional in the development industry. He has chosen from the start not to engage with the Council in this process. This was an appeal with no prospect of success on the basis of the evidence. If the appellant's witnesses are to be believed all the evidence is on the desk in front of him, but he has chosen not to present that evidence. Instead he has chosen to pursue an appeal he should have known would fail.
2. The appellant has failed to produce evidence in good time, and has not assisted in preparing any statement of common ground. He has chosen to prolong proceedings with submission of late and unhelpful evidence without forewarning. This is unreasonable and has led to wasted and unnecessary expense. A full award should be made.

#### **The response by the appellant**

3. In the appellant's view the Council had failed, in that they had no witness at all to confirm whether the property was, or was not used as a HMO. On the other hand neighbours had confirmed the property had always been in this use, and that the flat had been there for more than 4 or 5 years.
4. The Council failed to produce any evidence at all to confirm that the property was a HMO and that the flat was not there. The witnesses' time had been wasted for no reason, and the Council were attempting to deprive needy people of shelter. They failed to check their own records, which would clearly confirm that the HMO and flat had been there for enough time to be immune from enforcement action.

5. There had been no unreasonable behaviour by the appellant, and the application should be refused.

### **Reasons**

6. I have determined the application in the context of the government's Planning Practice Guidance. This includes the advice 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.
7. Very little evidence had been put in by the appellant prior to the Inquiry. The appeal form and statement of case contain little more than assertions that the property had been in use and occupied by 8, 10, or more people since 2002, and that a self-contained flat was formed in the building in 2009. Furthermore, that the Council had been aware of the HMO use and the existence of the flat. In his final comments, the appellant refers to records of such things as all the occupants of rooms, tenancy agreements, and information from builders, estate agents, and handymen. He also makes various allegations about the Council's dishonest behaviour regarding Council Tax. He states that full documentation would be available, and I assume this meant available to the Inquiry.
8. However, in the event, virtually none of these records were submitted at the Inquiry. About 10 (unsworn) statements were put in from existing and former occupants, all previously unseen by the Council. Some of these people gave evidence under oath or affirmation at the Inquiry. However, again there was little more than assertion that all rooms had been occupied at all times. Although I heard that rent was collected regularly and recorded in a rent book, no documentary evidence of this was put in. The limited tenancy agreement documentation gave little or no indication of continuous use.
9. Overall, despite his assurance that documentary evidence would be made available to the Inquiry to support ground (d), so little was put in, and at such a late stage, that it did not provide significant assistance. As a result of the paucity of material to support his contentions concerning the property, I consider it unlikely that the appeal could have succeeded on ground (d). I consider the appellant behaved unreasonably in this regard, and that the Council incurred unnecessary expense in defending their action at appeal.
10. Regarding ground (g), the appellant put forward no documentary evidence of notice periods to be given to tenants, or substantiate why the 3 month period would be inadequate. Although this aspect took up little inquiry time, I consider the appellant behaved unreasonably in not producing appropriate documentary evidence.
11. As to the appellant's argument that the Council should have produced their own evidence on occupation of the property as a large HMO and a flat, it is settled law that in appeals on legal grounds, such as ground (d), the burden of proof is on the appellant to show that on the balance of probabilities the uses had subsisted continuously for the relevant time period, and are immune from enforcement action. In this case the Council demonstrated the reasons they considered the appellant's case to be less than probable, and the reasons why they considered the appellant's evidence to be insufficiently precise and

unambiguous. I do not consider the appellant's argument in this regard in any way justifies his unreasonable behaviour.

12. Any complaint about the Council's administration of Council Tax is not a planning matter, and would need to be taken up in another forum.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

**Formal decision**

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

**Costs Order**

15. In exercise of my 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 Mr Rehan Sheikh shall pay to the Council of the London Borough of Brent, 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.
16. The applicant is now invited to submit to Mr Rehan Sheikh, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Stephen Brown*

INSPECTOR