

---

## Costs Decision

Site visit made on 13 September 2016

**by Gareth W Thomas BSc(Hons), MSc(Dist), PgDip, MRTPI**

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

**Decision date: 16 November 2016**

---

### **Costs application in relation to Appeal Ref: APP/L5810/W/16/3152121 Sheen Stables, Rear of 119 Sheen Lane, London SW14 8AE**

- 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 Mr John Barletta for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
  - The appeal was against the refusal to grant approval required under a development order for the conversion of 5no. existing office (B1a) units to 2no. residential houses (C3) comprising creation of kitchens, bathrooms and appropriate habitable rooms at rear of 119 Sheen Lane, London SW14 9AE
- 

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 25 October 2016.

### **Decision**

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

### **Reasons**

2. Paragraph 030 of the Appeals section 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. A substantive award is sought on the basis that there were no reasonable grounds for refusal of the application.
  3. The Council's decision on the application was taken in part at least following the advice of its Environmental Health Officer. The PPG advises at paragraph 049, that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted or fail to provide evidence to substantiate each reason for refusal. In this instance the advice given to planning officers was based on the premise that B1 uses could give rise to noise problems. The Council should have seriously questioned the veracity of such advice. B1 uses by definition are those business related uses that can take place within residential areas. It is therefore unclear why it was considered that the types of activities that could be undertaken under this use class could be "incompatible with the proposal for residential use". No evidence was presented to back up such claims. Instead the Council requested the applicant to undertake noise assessments, which for the same reasons would be unnecessary.
-

4. Further, it is relevant to note that the air condition plant and equipment located within the courtyard are unauthorised. I agree with the applicant that it would be iniquitous to argue that the presence of a noise generating device that is presently unauthorised should be used as an argument for resisting development that would normally enjoy permitted development rights. The responsibility lies with the Council to ensure that breaches of planning control are properly dealt with. This is particularly pertinent given the presence of residential properties that already exist in close proximity of these devices. It is clear that the applicant has invited the Council to resolve this matter and it is also equally clear that the Council recognises that action is required.
5. Given this is a notification under permitted development rights where noise is a matter that would normally need to be addressed before permitted development is sanctioned, I do not agree with the applicant's view that this could have been a matter to be dealt with by way of condition. I agree with the Council that as the offending apparatus fell outside the red line application site, the use of condition would not be appropriate. In addition, I am not convinced that the Council has failed to consider other applications in similar fashion. There is a difference of approach to be adopted between planning applications and notifications under permitted development rights. But that does not persuade me from finding that unreasonable behaviour has occurred on the above grounds.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

#### **Costs Order**

7. 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 Richmond-upon-Thames shall pay Mr John Barletta the costs of the appeal proceedings described in the heading of this decision.
8. The applicant is now invited to submit to the Council of the London Borough of Richmond-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Gareth W Thomas*

INSPECTOR