
Costs Decisions

Site visit made on 13 January 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 15 February 2017

Application 1:

**Costs application in relation to Appeal Ref: APP/L5810/W/16/3156540
Units 1 and 3 Foxton Mews, Richmond, Surrey TW10 6JR**

- 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 Harepath Estates (LLP) Ltd 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 for a change of use from B1(a) office use to C3 residential use to provide one 1 bedroom and one 3 bedroom residential unit.
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Application 2:

**Costs application in relation to Appeal Ref: APP/L5810/W/16/3156541
Units 1 and 3 Foxton Mews, Richmond, Surrey TW10 6JR**

- 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 Harepath Estates (LLP) Ltd for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of to grant approval for a change of use from B1(a) office use to C3 residential use to provide one 1 bedroom and one 3 bedroom residential unit.
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Decision

1. Application 1 for an award of costs is refused.
2. Application 2 for an award of costs is refused

Preliminary Matter

3. The applications for costs relate to two separate appeals which are linked in so far as they are made by the same appellant on the same site for almost identical schemes. Furthermore, in both applications the grounds submitted for an award of costs is identical. I am therefore satisfied that there is sufficient cross over to enable me to deal with them as a single decision.

Reasons

4. Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it advises that the Council is at risk of an award of costs being made against them if, amongst
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- other things, they prevent or delay development which should clearly be permitted.
5. In each case, a single reason for refusal was given (i.e. that there was insufficient evidence to establish that all parts of the buildings fall within class B1(a) office use). In both applications, the appellant asserts that the Council failed to afford sufficient weight to the statutory declarations submitted by the appellant in support of the lawful use and placed too great a reliance on the comments of interested parties.
 6. However, the appellant's central argument relied on the lawful use of the site in 2007 yet failed to provide evidence to establish that the units were being used for office purposes on the Relevant Date¹. Furthermore, the officer report, while raising a number of queries surrounding the lease and occupation of the site, clearly affords substantial weight to the statutory declarations but nevertheless concludes that they are insufficient to establish that all parts of the building fall within the requirements of Class O.
 7. My decision makes clear that, while I agree with the appellant that the evidence submitted indicates that the units were most probably used for purposes falling within class B1(a) between 1995 and 2007, I concur with the Council that there was a lack of evidence to establish that the units were in class B1(a) use on the Relevant Date. Furthermore, my on-site observations indicated that unit 3 was currently being used for purposes which would not fall solely within a class B1(a) use.
 8. It is for an applicant to demonstrate, with evidence, that the qualifying criteria for permitted development under Class O have been met. I have reached the conclusion that the appellant has not done so. Accordingly, I do not consider the Council to have acted unreasonably in refusing the applications on that basis.

Conclusion

9. For the reasons set out above, I conclude that both Application A and Application B for costs should be refused.

Rory Cridland

INSPECTOR

¹ As set out in paragraph O.1(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015.