
Costs Decision

Hearing held on 23 May 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 30 May 2017

Costs application in relation to Appeal Ref: APP/R5510/X/16/3163426 108 Willow Tree Lane, Hayes, Middlesex UB4 9BL

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms K Bains for a full award of costs against the Council of the London Borough of Hillingdon.
 - The hearing was in connection with an appeal against the refusal to issue a certificate of lawful use or development (LDC) for the use of the dwellinghouse as two self-contained flats.
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Decision

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

The submissions for Ms Bains

2. The costs application was submitted in writing. In brief a full award of costs is sought on grounds that the Council failed to take account of the Appellant's evidence, ignored the fact that it was too late to take enforcement action and ignored the fact that it had no evidence of its own to make the Appellant's evidence less than probable. It was unreasonable to refuse the application in those circumstances and this has led to wasted expense in having to pursue the matter to appeal.

The response by the Council

3. The following response was made orally at the hearing. The burden of proof was on the Appellant to make out her case and in this respect insufficient information was provided to enable the Council to make an informed judgement. The Council's statement of case sought to show that the Appellant's case was less than probable by identifying a lack of information and date ranges where there was no information other than tenancy agreements. Those, in themselves, do not substantiate the claim for immunity. There was no planning history to assist the Appellant and since she had interrogated other internal Council records (e.g. Council Tax) there was nothing else for the Council to draw on. Insufficient evidence was provided to warrant the issue of a LDC.

Reasons

4. The Planning Practice Guidance 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.

5. The Appellant submitted with her application ample evidence that the property had been converted into two flats as long ago as 1993. At the hearing the Council acknowledged that that was so and also accepted that it had subsequently been used as two flats. Council Tax records confirmed that conversion, as did British Gas albeit only from 2000.
6. Even discounting the period before acquisition of the property by the Appellant, she said it had been continuously used as two flats from 2009 onwards and had supplied the tenancy agreements as documentary evidence to back this up. In the absence of any contradictory evidence whatsoever, there was absolutely no reason to doubt the veracity of what she was saying or the authenticity of the supporting documents.
7. Other documents provided only added to the weight of evidence in support of her case.
8. In my view this is a clear case of the Council applying a more onerous test than "on the balance of probability". I consider it acted contrary to the advice in the Planning Practice Guidance that: *In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.*
9. The Appellant's evidence was precise and unambiguous and the Council's action in refusing the application with no shred of contradictory evidence was unreasonable and resulted in the Appellant incurring wasted expense in having to pursue the matter to appeal.
10. 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.

Costs Order

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

B M Campbell

Inspector

DOCUMENT submitted at the hearing

A Costs application for Ms Bains