
Costs Decision

Inquiry held on 28 February 2017

Site visit made on 28 February 2017

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 12 July 2017

Costs application in relation to Appeal Ref: APP/F5540/X/16/3151796 136 Northfield Road, Hounslow TW5 9JG

- The application is made under the Town and Country Planning Act 1990, sections 195, 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 Hounslow for a full award of costs against Mr Jigar Purohit.
- The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for use of the detached outbuilding as two self-contained units starting in May 2008 and has been in the same use since such date.

Summary of decision: the application is allowed, and a full award of costs is made.

The submissions for the Council

1. The Council had visited the appeal site, by arrangement, and in the company of the appellant in August 2015. The appellant had made representations about the use of the outbuilding for family use and for educating and helping disabled people, which were supported by the layout and content of the two units as they then were. If his statements were true, then continuous use over the relevant period cannot be established, and it would be dishonest and unreasonable to claim at a later date, and at appeal, that the residential use had been continuous. If those representations had been dishonest, then the *Welwyn/Jackson* principles would apply¹, and it is unreasonable to pursue a LDC through the appeal process, when the appellant avoided enforcement action as a result of his own positive deception.
2. It is difficult to imagine a more unreasonable pursuit of an appeal. The example given at paragraph 16-053-20140306 of the government's Planning Practice Guidance (PPG) of 'providing information that is shown to be manifestly inaccurate or untrue', and 'deliberately concealing relevant evidence at application stage or at subsequent appeal'.
3. If the appellant's conduct at the site visit in August 2015 was dishonest and intended to deliberately conceal the true position from the Council, the decision to pursue a certificate through the appeal system is manifestly unreasonable. If the representations at that site visit – and the subsequent visit on March 2016 were truthful, then those representations amounted to an admission that the use claimed had not been continuous throughout the relevant period, in which case the appellant's pursuit is similarly unreasonable.

¹ *Welwyn Hatfield Council v SSCLG* [2011] UKSC 15 & *Jackson v SSCLG* [2016] 2 WLR 2407.

4. The appellant's unreasonable behaviour had directly caused the Council to incur unnecessary and wasted expense in the defending the appeal, and a full award of costs should be made.

The response by the appellant

5. The appellant submitted that he had not been unreasonable, and had made nothing but true statements to this day. The two units had been in continuous residential use prior to August 2015, but had not been in residential use since then.

Reasons

6. 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.
7. The appellant says that he has acted truthfully at all points. It is the case that at the visit in August 2015 he presented the units as being in use for educational purposes. The cooking facilities had been removed, equipment and materials were on the premises that were consistent with such a use, and no residential use was apparent. At that time it could have been the case there was no residential use. However, by the time the circumstances of the LDC application were being investigated, the cooking facilities had been re-installed, giving the impression that there could be a residential use resumed at any moment.
8. At the appeal, the argument was put forward that there had been a continuous 4 year period of residential use after 2008, but before the educational use was instituted. It was being argued that the use had become lawful, and could be reverted to. This, in itself, is not an unreasonable argument.
9. However, the appellant's actions in first denying there was a residential use, removing and then replacing the cookers, and subsequently claiming that the use was already established, gave me little confidence in his reliability. Although he denied any awareness of the need for planning permission for separate residential uses for the outbuilding, he was clearly aware at the 2015 visit that he was in breach of planning control, and attempted to conceal the breach. It appears to me that he concocted the argument for a previously established use after the fact.
10. Although at any particular moment the appellant may have presented a truthful picture, the overall sequence was in my opinion an attempt to conceal the proper facts of the case from the Council. This in itself was unreasonable behaviour, and was compounded by taking the case to Inquiry. I consider the appellant behaved unreasonably both procedurally, and in terms of the substance of his case. As a result, the Council were put to the unnecessary expense of preparing for, and defending their case at Inquiry. I consider a full award of costs is justified.
11. 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

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

Costs Order

13. 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 Mr Jigar Purohit shall pay to the London Borough of Hounslow Council, 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.
14. The applicant is now invited to submit to Mr Jigar Purohit, 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