



## Costs Decision

Inquiry held on 4 July 2017

Site visit made on 3 July 2017

**By Mr A U Ghafoor BSc (Hons) MA MRTPI**

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

**Decision date: 27 July 2017**

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### **Costs application in relation to Appeal Ref: APP/G5180/X/16/3154436 Office Block at the Bronze Works, Kangley Bridge Road, Lower Sydenham SE26 5AY**

- 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 Mr Dominic Hill for a full award of costs against the Council of the London Borough of Bromley.
  - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for office use of the front building being a use falling within Class B1(a) in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Mr Hill**

2. The following key points form the basis of this application. The Council failed to properly determine the application for a lawful development certificate ['LDC'], because it misapplied principles established in relevant case law to the facts<sup>1</sup>. Had it directed itself to the matters at hand, the LDC could and should have been issued thus avoiding an unnecessary appeal.
3. On 10 December 2013 the Council approved a prior approval application pursuant to the relevant part of the then in force Town and Country Planning (General Permitted Development) Order 1995 as amended<sup>2</sup> for conversion of the front building from office to residential. Further applications for express planning permission were made for operational development to facilitate the permitted change. The Council then decided to challenge the lawfulness of the front building's office use; officers insisted on the submission of an application for LDC. The Council's handling of the matter was unreasonable and has caused significant delay.

### **The response by the Council**

4. The LDC application related to the office block at the front of the Bronze Works and sought to certify that its last use was lawful. The terms of the application were that the use was immune from enforcement action due to the passage of time. The Council examined the evidence in the light of relevant case law and

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<sup>1</sup> *Basingstoke and Deane BC v SSCLG & Stockdale* [2009] EWHC 1012 Admin; JPL 1585 and *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886, *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 and *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461.

<sup>2</sup> Council ref: 13/03598.

considered that the office use was ancillary to the wider commercial use of the Bronze Works site. Mr Hill's case sought to distinguish the front building as a separate planning unit in primary office use and that is how the evidence was assessed. The prior approval process is different to the LDC procedure.

### **Inspector's reasons**

5. 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 or wasted expense in the appeal process. The Planning Practice Guidance (PPG) advises that, awards against a Council may be either procedural or substantive.
6. The LDC application was submitted on 16 November 2015. On 13 July 2016 an appeal against non-determination was made by Mr Hill; he exercised his right of appeal. Subsequently, the Council made a formal decision not to issue an LDC on 15 July 2016, but there were negotiations resulting in delay. For example, it appears late evidence had been submitted in April 2016<sup>3</sup>. The quantum of evidence does not confirm, in my assessment, Mr Hill's assertion that the Council deliberately prevaricated and delayed issuing its decision.
7. My decision explains why I have arrived at a different conclusion to that of the Council. Nonetheless, I consider that the reasons stated in its decision notice are clear. The evidence presented with the application had been assessed as being insufficient to substantiate the immunity claim. I am cognisant of Mr Hill's unhappiness with handling of the application. Nevertheless, sufficient evidence had been presented at appeal stage in support of the Council's stance.
8. Acting contrary to established case law can amount to unreasonable behaviour. This will not necessarily be the case where reliance is placed on legal interpretation of case law which, quite evidently, differs amongst legal experts. The Council sought professional advice and followed interpretation of case law on certain matters having regard to legal opinion. While I have applied the same principles to the facts of this particular case and arrived at a different conclusion, in my opinion the adoption of an alternative legal position is not by itself irrational or unreasonable.
9. I consider that the Council's stance and approach combined with its assessment of the LDC application has not resulted in procedural or substantive unreasonableness thereby causing Mr Hill to incur unnecessary or wasted expense in the appeal process. On the basis of all of the relevant circumstances, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs, partial or full, is unjustified in this case.

*A U Ghafoor*

Inspector

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<sup>3</sup> See the Council's formal decision notice.