



Cost Decision

Site visit made on 5 July 2017

by Sandra Prail, MBA, LLB (Hons), Solicitor (non practising)

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

Decision date: 27 July 2017

Costs application in relation to Appeal Ref: APP/L5810/X/16/3164343 Land at 11 Church Street, Hampton, TW12 2EB.

- 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 Mrs Alison Cheers 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 a certificate of lawful development (LDC) for conversion of garage and 4m deep rear extension.
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Decision

1. The application for an award of costs is allowed in part in the terms set out below.
2. In exercise of the powers under sections 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 to Mrs Alison Cheers the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contending whether the proposal satisfied Article 3, Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) by reason of its alleged use as a guest house and/or use for temporary accommodation for the purposes of the Greater London Act 1973.
3. The Appellant 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.

Reasons

4. The *Planning Practice Guidance* (the Guidance) advises that irrespective of the outcome of the appeal, 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 Guidance identifies that a local planning authority may be at risk of an award of costs if it prolongs the proceedings by introducing a new reason for

refusal necessitating an adjournment or extra expense for the preparatory work that would not otherwise have arisen.

6. The Appellant's case is that the Council acted unreasonably in failing to understand how the building was being operated and failing to adequately distinguish between a self catering holiday let and a guest house and the planning consequences of each. She argues that failure to inspect the interior of the property contributed to the unreasonable behaviour.
7. The Council respond that regardless of their description of the use at the time of the application they would still have refused the LDC as in their view the property was being used as temporary sleeping accommodation for the purposes of the Greater London Act.
8. The Council's report justifying the refusal of the LDC uses the expressions 'serviced let' and 'guest house'. It makes no attempt to distinguish between the two and the planning consequences of each. The refusal notice refers to use as a guest house whilst the report states that at a site visit the property was identified as being used as a serviced holiday let. The justification based on use as temporary accommodation for the purposes of the Greater London Act was not raised in the decision notice or the delegated report.
9. I find that it was unreasonable for the Council to refer to use as a guest house in its refusal notice and to present no evidence on appeal to support that assertion. This caused the Appellant to incur wasted expense in contesting the issue. I further find it unreasonable for the Council to raise at such a late stage the 1973 Act. In my substantive decision I find that the evidence does not on a balance of probabilities support an assertion that there has been a change of use to temporary accommodation. I am not persuaded that if the Council had addressed its mind to this point at the time of making its decision that it would still have refused the LDC. Raising this issue has caused the Appellant to incur wasted expense in contesting this point.

Conclusion

10. For the reasons given I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated. The Council did behave unreasonably and cause the Appellant to incur wasted expense by asserting use as a guest house without supporting evidence and raising the 1973 Act at a late stage. A partial award of costs is made and, to this extent, the application is allowed.

S. Prail

Inspector