
Costs Decision

Inquiry held on 22 August 2017

Site visit made on 22 August 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 29 August 2017

Costs application in relation to Appeal Ref: APP/N1920/C/16/3164658 113 Hillside Avenue, Borehamwood WD6 1HH.

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hertsmere Borough Council for a full award of costs against Mrs Juliet Benson.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the premises into two self-contained residential units.
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Decision

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

The submissions for Hertsmere Borough Council

2. The appellant had shown considerable disregard to the appeals procedure in not providing any statement, proof or other evidence within the timetable. No evidence had been produced to substantiate the grounds of appeal.
3. Such evidence as was produced was placed before the Inquiry extremely late, after the Inquiry had opened.
4. The onus of proof is on the appellant and no substantive evidence had been produced either before or at the Inquiry to substantiate the grounds of appeal, that is that the annex to 113 Hillside Avenue had been occupied as a self-contained dwelling for a continuous period of four years prior to the issue of the enforcement notice and the appeal was bound to fail.
5. As a result the appellant had acted unreasonably causing the Council to incur unnecessary expense in contesting the appeal and a full award of costs is sought.

The response by Mrs Juliet Benson

6. Had there been no evidence whatsoever the appeal would indeed have been bound to fail. However the appellants case was explained in the grounds of appeal and there was no need for a statement of case or proof of evidence.
7. Cogent evidence had been produced and the late submission of documents had not resulted in the Council incurring additional expense.
8. The appellant had not behaved unreasonably.

Reasons

9. 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.
10. The appellant had given no explanation in the grounds of appeal as to why the response to the Planning Contravention Notice conflicted with the assertion that the premises had been tenanted since 2007 and no evidence had been produced before the day of the Inquiry to substantiate the grounds of appeal. Although additional late evidence, in the form of a bundle of documents was admitted on the day, none of this documentation provided proof as to actual occupation of the premises by tenants for a continuous period of four years and the limited evidence as to tenancy agreements was not corroborated by any substantive evidence. As a result of the lack of any substantive evidence as to the actual occupancy and the acceptance that there were significant gaps when the breach ceased, the appeal was bound to fail.
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.

Costs Order

12. 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 Juliet Benson shall pay to Hertsmere Borough 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.
13. The applicant is now invited to submit to Juliet Benson, to whom and to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Hammond

Inspector