



Costs Decision

Inquiry Held on 29 January 2019

No Site visit required

by Simon Hand MA

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

Decision date: 13 February 2019

Costs application in relation to Appeal Ref: APP/G5180/X/18/3200876 Bronze Works, Kangley Bridge Road, Lower Sydenham, London, SE26 5A

- 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 Mssrs Nicholas and 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 the use of the building as 8 no. flats (Class C3).
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Decision

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

The submissions for Mssrs Nicholas and Dominic Hill

2. The Council acted unreasonably by frustrating the central purpose of the permitted development rights to convert offices into dwellings. They unlawfully prevented the completion of the development and frustrated the appellant's efforts to resolve the situation. The Council's refusal of the LDC is contrary to established legal principles as set out in particular in *Impey* and because they implied a meaning into the wording of Class O which simply isn't there. Their officer's report failed to consider the proper balance required by *Impey*. The Council also failed to withdraw their fallback argument when they had accepted the material change of use to 1 flat was lawful, a fact that fatally undermined the fallback. Finally they failed to issue a certificate for one flat when that was manifestly the correct procedure.
3. The Council were also unreasonable in refusing the previous application for an LDC (DC/15/05049/ELUD), which was eventually resolved in the appellant's favour at appeal. However, that appeal did not deal with the issue that the Council had already determined the question of whether the building was used as offices by granting the prior approval in the first place.

The response by the London Borough of Bromley

4. The fallback argument is not affected by the material change of use of part of the building to a single flat. The appellants' reliance on *Impey* was misplaced and they have misunderstood the judgement. The Council's arguments were reasonable and based on a proper understanding of case law. Having accepted that one flat is lawful, the Council have agreed to the issue of a certificate on that basis.

Reasons

5. 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.
6. It is clear from my decision that I disagreed with the appellants' approach and reliance on Impey. In my view the Council had good grounds for refusing the current LDC application and their reading of Class O was not unreasonable. Their fallback was not really a fallback, but a different approach to Impey, and it was not affected by the material change of use of part of the building to one flat.
7. The Council acted reasonably in accepting they could have issued a certificate for a single flat and supported that as an option for me to consider. Even had they not, the appeal would still have been made and costs generated accordingly.
8. Regardless of the behaviour of the Council at the previous appeal (APP/G5180/X/16/3154436), costs associated with that appeal cannot be dealt with at this appeal.
9. In my view the Council have not behaved unreasonably in this appeal and an award of costs is not warranted.

Simon Hand

Inspector