
Costs Decisions

Site visit made on 24 September 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 8 October 2019

Costs A: Application in relation to Appeal Ref: APP/C5690/X/18/3214738 Flat 1, The Old Post Office, 61 Devonshire Road, London SE23 3EW

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jonathan Chattey of J &K Group for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for a self-contained residential unit - Class C3 dwellinghouses¹.
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Costs B: Application in relation to Appeal Ref: APP/C5690/X/18/3214776 Flat 3, The Old Post Office, 61 Devonshire Road, London SE23 3EW

- The application is made under the 1990 Act, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jonathan Chattey of J &K Group for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of a certificate of lawful use or development for a self-contained residential unit - Class C3 dwellinghouses.
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Costs C: Application in relation to Appeal Ref: APP/C5690/X/18/3214791 Flat 4, The Old Post Office, 61 Devonshire Road, London SE23 3EW

- The application is made under the 1990 Act, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jonathan Chattey of J &K Group for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of a certificate of lawful use or development for a self-contained residential unit - Class C3 dwellinghouses.
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Decisions

1. Costs A: The application for an award of costs is refused.
Costs B: The application for an award of costs is refused.
Costs C: The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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.

¹ This refers to Class C3 of The Town and Country Planning (Use Classes) Order 1987, as amended.

3. The applicant claims that the Council's refusal to issue the three LDCs was not well-founded. The refusals and the associated appeals could have been avoided altogether had the Council engaged with the applicant in a more helpful manner from the outset. The applicant describes the application process highlighting the alleged behaviour of the Council officers, which is summarised as a failure to engage and be proactive. Moreover, the applications were out-of-time by the date of the decisions, which added to the delay. The appeal process has resulted in the applicant incurring unnecessary or wasted expense.
4. The three applications were refused due to a lack of information, which the Council considered failed to show continuous occupancy throughout the relevant period. This concerned evidence of Council Tax payments and/or gaps in the coverage of the submitted tenancy agreements. The applicant argues that all this evidence was readily available and could have been produced had the Council made their concerns known in a timely manner, as opposed to simply issuing refusal notices. Moreover, it is contended that the matters of concern did not provide the Council with any evidence to contradict or otherwise make the applicant's version of events less than probable.
5. From the email exchange, submitted to support the applicant's claims, it seems that the Planning Officer was dealing with a very high caseload and, as a result, he missed correspondence. The delay in decision making also appears to be due to staff resources at senior manager level. I accept that these matters resulted in a less than satisfactory service, which is acknowledged by the Council. However, I understand an extension of time was agreed between the main parties.
6. As set out in my Decisions, the Council identified gaps in the evidence provided in respect of each of the three applications that cast doubt on the applicant's version of events. The information submitted with the appeals clarified matters to the extent that I have been able to issue the disputed LDCs. Nonetheless, this information was not provided to the Council at the outset, despite the onus of proof being firmly upon the applicant. The Council was not acting unreasonably in assessing the evidence and identifying areas of concern.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore

Inspector