The Planning Inspectorate

Costs Decision

Site visit made on 20 September 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 4 November 2019

Costs application in relation to Appeal Ref: APP/N5090/W/19/3231376 226B Woodhouse Road N12 0RS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr M Afxentiou for a full award of costs against the Council of the London Borough of Barnet.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for change of use from Class B1 (Office) to Class C3 (Residential).

Decision

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

Reasons

2. 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.

3. The applicant says that the council acted unreasonably when assessing the legal position of the case, in that he was not required to demonstrate that the appeal property was being used as an office on 29 May 2013 since the correct legal test is whether on the balance of probabilities there was lawfully an office use on or before that date.

4. I have seen nothing in the appeal papers to indicate that the property was not in use on 29 May 2013. The statutory declaration by Mr Karakoc states that he used the property as an office for the duration of the tenancy, starting within 2 weeks of signing on 24 December 2010 and ending on 11 November 2013 albeit that, at some point within that period, he started to use the property for mixed residential and office use.

5. Accordingly, the property was in use on 29 May 2013 and the correct legal test under Class O.1.(b) is whether or not the building was used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order[1] when it was being used on that date. That is, how as a matter of fact the building was being used and not solely the permitted lawful use at that time. The Council's legal position was therefore correct.

[1] Town and Country Planning (Use Classes) Order 1987, as amended.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andrew Walker

INSPECTOR