The Planning Inspectorate

# Costs Decision

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 July 2020**

**Costs application in relation to Appeal Ref: APP/M9584/W/20/3246733**
**Unit 138, Omega Works, 4 Roach Road, London E3 2PA**

- 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 Simon Roberts (Dlon Ltd) for a partial award of costs against London Legacy Development Corporation.
- The appeal was against the refusal to grant approval required under Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from office to residential.

## Decision

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

## Reasons

2. The Planning Practice Guidance (the 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. The withdrawal of any reason for refusal is one of the examples of unreasonable behaviour set out in the PPG, which may result in an award of costs.

3. The application relies on the claim that the local planning authority's decision not to defend its first reason for refusal, was based on information that was already available when it determined the application. It is therefore contended that the appellant had to unnecessarily incur time and expense in contesting this reason for refusal at appeal.

4. The original application included a statutory declaration by the appellant stating that he occupied the premises between 2012 and 2017 for office purposes. This was accompanied by receipts for decoration and furniture delivery, and evidence that service charges and ground rent had been paid. The statutory declaration did not, however, include information about the nature of the office use, its intensity, continuity, whether it fell within Class B1(a), or whether it was the sole or primary use of the premises. Based on the information on the planning history of the building, it was not unreasonable for the local planning authority to conclude that this evidence was insufficient to demonstrate that there was a lawful B1(a) use of the premises on 29 May 2013, and to refuse the application.

5. The PPG advises that, before making any appeal, the party seeking permission should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more likely to gain permission. I have not been made aware that this advice was followed.

However, it was open to the appellant to submit additional evidence to the local planning authority, in support of his claim that a lawful B1(a)use was in place on 29 May 2013. This could have led to a further application for prior approval, or, alternatively, the lawfulness of the B1(a) use could have been formally determined through an application under section 191 of the Town and Country Planning Act 1990. Either of these routes would have given the local planning authority the opportunity to review the additional evidence, and could have avoided the need for an appeal.

6. The additional evidence that was submitted with the appeal was in the form of a letter from a former employee, and a copy of his employment contract. This information confirmed that he was employed by the business from May 2012, and that the appeal premises was his main place of work. It also provided details of the nature of his work, as a Sales Marketing Officer. It appears that this was the first time the local planning authority had seen this documentation. In the light of this extra material, it reviewed its position, and concluded that sufficient information had now been provided to demonstrate the lawfulness of the B1(a) use. It therefore withdrew the reason for refusal in its Statement of Case, which was submitted in accordance with the appeal timetable.

7. The local planning authority's withdrawal of its reason for refusal was not, therefore, based on information that was already available when it determined the application. Furthermore, it had not had the opportunity to consider the additional evidence prior to the submission of the appeal. Following receipt of the appeal, the reason was withdrawn at the earliest opportunity, so the appellant was not put to any additional expense pursuing the matter at Final Comments stage.

**Conclusion**

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Nick Davies*

INSPECTOR