



Costs Decisions

Site visit made on 5 August 2020

by **Simon Hand MA**

Decision date: 22 October 2020

Costs applications in relation to Appeal Ref: APP/U5360/C/19/3241370 70 Tadworth Road, London, NW2 7UD

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Chaim Reiner for a full award of costs against the Council of the London Borough of Hackney.
 - A counter claim is made by the London Borough of Hackney against Mr Chaim Reiner
 - The appeal was against an enforcement notice alleging the material change of use of the premises to a mixed use as two flats and a three bedroom House in Multiple Occupation (HMO).
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Decisions

1. Neither costs claim is allowed and the award of costs is refused in both applications.

The case for the Appellant on their Claim

2. The appellant relies essentially on what they consider to be confusion at the Council, whereby in the past the Council have treated the property as being divided into flats. Notes of a site visit made in 2015 and the PCN issued in 2019 both refer to the use as flats. It is thus unreasonable to now argue that some of the flats are in fact an HMO.
3. The Council also ignored evidence such as the Council Tax records, electric meters, housing benefit claims which all suggested the property was divided into flats.

The Case for the Council on their Claim

4. The Council argue that the appeal has always been wholly without merit. The property has never been used by the appellant as a dwelling (the use when it was purchased was an HMO in breach of an enforcement notice), so it has never benefitted from permitted development rights for the extension. The appellant has also maintained there were no cooking facilities in the rooms and any that were there, were put in by tenants in defiance of the landlord.

Reasons

5. In my view neither party has properly got to grips with this case. The Council have treated the property at times as if it were divided into flats, and at other times have decided at least parts of it are an HMO. The appellant, or people acting on his behalf, have sought to claim the property is not flats and at the same time that it is.

6. When the Council issued their notice, it only makes sense if they were assuming the introduction of a plug-in microwave and hob was sufficient to convert a room in an HMO into a separate dwelling. This is not quite what they later seemed to be arguing, but they do say it is a matter for the decision maker, which of course is correct. On the other hand the appellants did not seek to argue the opposite, that there were no flats, but agreed with the Council that the microwave and hob were sufficient to turn each room into a flat, the disagreement came over whether all the rooms were flats or just some.
7. In my view neither argument is tenable and I have tried in my decision to make it clear why I consider the building has never been divided into flats but has always been an HMO. However, I do not think the parties' confusion is unreasonable, the current law as to what defines a flat or an HMO is confusing and at times is interpreted in contradictory ways. Thus on the question of flats or an HMO I do not think either party acted unreasonably.
8. On the question of the extension, as I have found the property is an HMO and one that falls within Class C4, then it does have permitted development rights and the extension is likely to be lawful – although I do not have any actual evidence to specifically make that a statement of fact. However, the extension is not included in the allegation, which is entirely directed against the use. The requirements do oblige the appellant to demolish the extension. This would only be reasonable if the extension had been built solely to facilitate the change to the use alleged, had I found that use to be unlawful. As the notice was quashed on ground (b) there was no need to consider the extension further. However, when the Council issued the notice they had evidence that it was not a dwelling. The appellant contradicted this but it was not a wholly unreasonable assumption to make at that time.
9. Consequently, I find that neither party has behaved unreasonably and an award of costs is not warranted for either party.

Simon Hand

Inspector