
Costs Decision

Site visit made on 10 November 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Costs application in relation to Appeal Ref: APP/N5660/C/19/3241093 5 Glenister Park Road, London SW16 5DS

- 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 Vincenzo Giordano for a full award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against an enforcement notice alleging the material change of use of the premises from a single dwellinghouse to five self-contained flats.
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Decision

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

Background

2. The Planning Practice Guidance (the 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.

Reasons

3. The application relates in part to the actions of the Council in relation to the pursuance of enforcement action. The Guidance states that local planning authorities must carry out adequate prior investigation and that they are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
4. The applicant considers that the Council acted unreasonably in issuing the notice because the alleged change of use has not occurred and that the Council should have accepted his explanation of the use of the property, as noted by the Council's Licensing Team.
5. It will be seen from my Decision Letter that, on the basis of the evidence, I have concluded that a change of use to five flats has occurred. On this basis the Council had grounds to pursue enforcement action. The presence or absence of an HMO licence is not determinative because such a document is granted under a different legislative regime. Furthermore, even if the officer carrying out the site inspection for the HMO licence was supportive of the development this does not represent the formal view of the Council in respect of the need for planning permission or necessarily stop the Council from pursuing enforcement action.

6. The applicant also seeks costs on the basis of inaccuracies in the Council's statement which he had to respond to. In his response to the Council's statement, which is entitled Heal Planning LPA Statement Counter-Response, he says that there are a number of factual errors which are misleading and require further clarity. However, it appears to me that the points which the applicant makes are an elaboration of his case in response to the Council's evidence and arguments. This is part of the usual process by which an appeal is determined and the invitation to submit final comments on the Council's statement was included in the start letter dated 28 April 2020.
7. I do not find that the Council has acted unreasonably either in relation to its decision to pursue enforcement action or in relation to the evidence that it has submitted in respect of the appeal.

Conclusion on Costs Application

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

Sarah Dyer

Inspector