
Costs Decision

Inquiry Held on 2 June 2021

Site visit made on 3 June 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2021

Costs application in relation to Appeal Ref: APP/A5840/C/20/3257301 68 East Dulwich Grove, London SE22 8PS

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Southwark for a full award of costs against Mr Altan Ramadan.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the material change of use of the Property by subdividing the Property to create 12 self-contained dwelling flats (six studio flats on the ground floor, four studio flats on the first floor and two studio flats on the second floor) ("the Unauthorised Use").
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Decision

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

Submissions

For the Council – Summary of application

2. The costs application was submitted in writing at the Inquiry. In summary, the Council claim that the appellant acted unreasonably if the Inspector's site visit shows a materially different arrangement to the premises than that shown in evidence and that is found to affect the outcome of the appeal (because it occurred before the notice, such that the alleged change of use is not made out).

For the Appellant - Summary of response

3. The response was set out orally at the Inquiry and the application is resisted. The appellant states that there was no unreasonable concealment. The Council carried out a site visit in May 2019 and therefore could have established for themselves whether works were continuing after August 2018. It was clear during cross examination that the Council's witness was aware of works continuing after this date, and indeed, he specifically requested that the roof of the rear extension was put on. As such there was clearly no concealment. Furthermore, the Council's witness confirmed that a notice would have been issued in any case. Therefore, there would be still be an appeal and an Inquiry, and thus there has been no wasted expense.

Reasons

4. 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
5. Whilst deliberately concealing relevant evidence amounts to unreasonable behaviour, I am not convinced that this would have prevented the appeal from coming forward. Although further works were carried out after the Council's site visit in August 2018 and before the notice was served, those works do not appear to be significant and my decision does not turn on this.
6. Furthermore, it is for Council to decide whether to take further action. Once the notice was served it is up to the appellant whether they wished to appeal. It will be seen from my decision that based on all the evidence before me, I agree with the appellant that, on the balance of probability, a material change of use to create 12 self-contained flats has not occurred. As such, the appellant has substantiated his appeal.
7. Therefore, the Council has not been put to any unnecessary or wasted expense dealing with this appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the applicant's claim for costs fails.

R Satheesan

INSPECTOR