



Costs Decision

Site visit made on 20 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2021

Costs application in relation to Appeal Ref: APP/N5660/C/21/3274118 38 Morrish Road, London SW2 4EH

- 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 Ms Merle Cecilia Joseph for a full award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against an enforcement notice alleging without planning permission, the unauthorised material change of use of the premises from a House in Multiple Occupation (Use Class C4) to four self-contained one-bedroom flats and two self-contained bedsit/studio flats.
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Decision

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

Reasons

2. 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.
3. For enforcement action, local planning authorities must carry out adequate prior investigation. The PPG advises 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. The applicant asserts that the Council has not sufficiently made its case and service (of the enforcement notice) was facilitated because of ignorance.
4. The PPG also advises that local planning authorities are at a risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by acting contrary to, or not following well-established case law. The main thrust of the applicant's costs claim in this regard is that the Council has not properly considered the existing use of the Premises and has misapplied the law with respect to the definition of a House in Multiple Occupation (HMO).
5. The Town and Country Planning (Use Classes) Order (UCO) 1987 (as amended) defines Class C4 HMO, and in turn relies on the definition contained in section 254 of the Housing Act 2004¹. However, in practice, whether a building is an HMO or is flats is not straightforward. Whether a unit is self-contained or not is a matter of fact and degree.

¹ But does not include a converted block of flats to which section 257 of the Housing Act 2004 applies

6. The Council's evidence includes information provided by its HMO Licensing Team and a site visit, carried out by an enforcement officer. It is clear from its evidence that the Council has considered whether each of the units contained 'basic amenities'² and that whilst communal facilities were available, it has considered whether those basic amenities were shared.
7. What the Council considered, on the balance of probabilities, was whether the occupants of the units were likely to have used the communal kitchen or, alternatively, would have used the facilities provided within their rooms for cooking, thereby indicating the units were being used as separate flats. Considering how the rooms have been used is, in my view, the correct approach.
8. The evidence provided by the Council show that the rooms all had cupboards with a sink, worktop and storage space and at some point, also had microwaves and fridges. It is therefore not an unreasonable assumption that the units were self-contained. Whilst I have disagreed with the Council on the basis of the evidence provided, I do not believe that the Council has failed to consider the use of the premises or relevant legislation within the Housing Act 2004. Consequently, I cannot agree that the Council has behaved unreasonably.

Conclusion

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

M Savage

INSPECTOR

² Defined in the Housing Act 2004 as a toilet, personal washing facilities or cooking facilities.