
Costs Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

**Costs application in relation to Appeal Ref: APP/G5750/X/20/3265206
35 Alexandra Street, Canning Town, London E16 4DL**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Newham for a full award of costs against Mr Kiran Samani.
 - The appeal was against the refusal of a certificate of lawful use or development for 'applying for C3 (Dwelling) to C4 (HMO)'.
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The word "unreasonable" is used in its ordinary meaning.
3. Paragraph 052 of the NPPG sets out examples of the types of behaviour that may give rise to a procedural award against an appellant. Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example, by complying with the requirements and deadlines of the appeals process. Under paragraph 053, the right of appeal should be exercised in a reasonable manner.
4. The gist of the Council's argument is that the appellant has not exercised the right of appeal responsibly. They state that the LDC application and subsequent appeal should have been accompanied by sufficient evidence from the outset to support the appellant's case.
5. In spite of being given every opportunity during the application stage, they say, the appellant failed to provide sufficient evidence to demonstrate the lawful use of the appeal site as an HMO in Use Class C4. This situation has been repeated during the appeal, with the appellant providing piecemeal evidence in subsequent stages of the process. This has made it onerous and excessively time-consuming for the Council to provide a definitive assessment of the evidence.
6. Turning to the planning officer's report, it seems that the appellant has submitted only one tenancy agreement to support his LDC application. This covered the period between September 2013 and September 2014. In

consideration of the application, the Council undertook a review of their own licensing records in order to understand the use of the house at the relevant time. Having considered all this evidence, they refused the LDC application.

7. It is clear that after receiving the refusal, the appellant set about gathering additional evidence to support his case at appeal, including a number of documents such as additional tenancy agreements, invoices, an energy performance certificate and a Council tax document. He was sent a copy of the appeal timetable, and appears to have submitted his documentation in accordance with this timetable.
8. As may be seen from my main decision, I have found little merit in the appellant's case, and his evidence has not been persuasive enough to warrant the issuing of a Lawful Development Certificate. However, that in itself is not grounds for an award of costs against him.
9. The NPPG is clear that there is a right of appeal, which the appellant has exercised. He has engaged with that process and amassed whatever evidence was presumably available to him. The Council have of course had to put time and resources into the appeal process. However, whilst I recognise the Council's frustration, I am not persuaded that they were put to any significant wasted or unnecessary expense in dealing with the twenty or so relatively brief documents submitted with the appeal.
10. The appellant had the right to appeal, and to produce additional evidence through that process, and therefore the appeal could not have been avoided. Regardless of the quality of the evidence, or the fact that the appeal was not successful, the appellant was entitled to have his submissions fully considered.

Conclusion

11. For the reasons above, I find that it has not been demonstrated that unreasonable behaviour has occurred which has caused unnecessary or wasted expense on the part of the Council, as described by the NPPG. As a result, no award is made.

Elaine Gray

INSPECTOR