
Costs Decision

Site visit made on 7 July 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Costs application in relation to Appeal Ref: APP/R5510/X/22/3290784 5 Old Dairy Lane, Ruislip HA4 0FY

- 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 SLI UK Real Estate Fund for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of a certificate of lawful use or development for confirmation that Unit 5, The Old Dairy is within Use Class E, that the proposed tanning salon is within Use Class E and that the tanning salon can lawfully occupy Unit 5.
-

Decision

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

Background

2. The Planning Practice 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.
3. The applicants consider that the Council has behaved unreasonably because it failed to seek further information from the applicants or use information which was readily available, and it did not apply legislation and regulations correctly which has led to a delay in development which should clearly be permitted. Furthermore, the applicants consider that the Council has not substantiated its case.

Reasons

4. The Town and Country Planning Act 1990 (the Act) says that if the local planning authority are provided with information satisfying them that the use would be lawful, they should issue a certificate and in any other case they shall refuse the application. This applies in respect of both certificates for proposed use and existing use.
5. The reference to the onus of proof being on the applicant in cases where the use has become lawful through the passage of time in the Procedural Guide¹ does not remove the responsibility for providing satisfactory information to the Council from the applicant in cases relating to a proposed use. In this case the Council was not persuaded by the evidence before it and it acted in accordance with the Act in refusing the application.

¹ Procedural Guide Certificate of lawful use or development appeals- England (February 2022)

6. It follows that I do not find that the Council acted unreasonably in not seeking further information from the applicants. Similarly, I do not consider that the Council acted unreasonably in failing to take account of tanning salons in Hillingdon generally or their presence in commercial and similar localities. These are matters which the applicants could have brought to the attention of the Council in detail in order to ensure it had satisfactory information before it.
7. The applicants are critical of the Council in terms of its lack of reference to the Explanatory Memorandum and Impact Assessment which accompanies the Town and Country (Use Classes) (Amendment) (England) Regulations 2020. However, the Council says that it has had regard to them and whilst not cited in the report, I am satisfied that this was the case given the content of the delegated report. It was not necessary for the documents to be specifically referenced and the Council has not acted unreasonably in this respect.
8. On the question of whether or not the subdivision of Unit 5 constitutes an act of development or not, it will be seen from my decision that this is dependent on the use or uses to which the subdivided units will be put. In the event that part of Unit 5 was occupied by the tanning salon, falling within Class E, and the other part of Unit 5 was also in Class E use, then the subdivision of Unit 5 would not amount to development subject to the consideration of external alterations.
9. However, the Council was arguing that the tanning salon was not a Class E use. In such a scenario had I agreed with the Council then the subdivision would have required planning permission. To that extent the Council has not delayed the development in respect of the sub-division of Unit 5.
10. The planning permission (Council Ref. 73596/APP/2021/2058) which the Council has granted for alterations to the shopfront of Unit 5 does not refer to subdivision. Whilst it may facilitate the formation of two units it is not determinative in respect of whether subdivision amounts to development in this case.
11. The Council produced an Appeal Statement in which it responded to the applicants' statement of case and provided a copy of the delegated report. Whilst I concluded that the Council's decision to refuse to grant an LDC was not well-founded, the Council did make submissions to substantiate its case and it did not act unreasonably in that regard.

Sarah Dyer

Inspector