

Costs Decision

Site visit made on 5 September 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Costs application relating to Appeal Ref: APP/N4720/X/22/3300323 34 Cross Flatts Parade, Cross Flatts, Leeds LS11 7JL

- The application is made by Thomas Light of Premo Property Ltd under the Town and Country Planning Act 1990, sections 195 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5), for a full award of costs against Leeds City Council.
 - The appeal was against the refusal to grant a lawful development certificate for the proposed use of the house "as a 6-person house in multiple occupation (HMO) in use class C4".
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Costs order

1. In exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to the Town and Country Planning Act 1990 and all other enabling powers in this behalf, Leeds City Council are ordered to pay to Thomas Light of Premo Property Ltd the costs of the appeal proceedings described above, such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is invited to submit to Leeds City Council, to whom a copy of this costs decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Reasons for the costs order

3. The Government's Planning Practice Guidance ("the Guidance") indicates that all the parties to an appeal are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, the party may be subject to an award of costs.
 4. The applicant summarises his reasoning in support of the costs application as follows: -
 - a) by refusing to provide the planning officer's report before the appeal was submitted, the Council withheld information that would have helped him better understand the decision to refuse the application for the certificate.
 - b) by failing to correctly understand the application proposal and to interpret and apply planning law, the Council prevented or delayed an application that should have been permitted.
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5. In response, the Council state that the report was made publicly available on their 'Public Access' website on 28 April 2022 as are all reports and they deny refusing to provide it. They re-assert the arguments they put forward in the appeal process that the proposed use would constitute development requiring planning permission.
6. As to 4a) above, the decision to refuse the certificate was made on 28 April 2022 and the applicant was notified on that day. On 30 April the applicant's agent contacted the Council's Department of Planning by email asking for a copy of the officer's report for the application. On 3 May he received a reply by email from the Department which stated "Thank you for your enquiry. Officers notes for CLP/CLE are not public documents and are internal documents only. Unfortunately this means we are unable to provide information requested. You can however submit a Freedom of Information request, this can be done through link below." There is no indication that he was told about the 'Public Access' website. The appeal was submitted on 1 June.
7. It does appear therefore that the information requested by the agent was not supplied at the time of the request. This may have been due to an error or a misunderstanding by the officer writing the reply. However, I do not consider that the Council's failure in this regard caused the applicant to incur unnecessary or wasted expense in the appeal process. The agent works for a professional planning appeals company and I expect the company to be aware that local planning authorities normally publish reports on their websites and to research these websites when considering the prospects of a successful appeal. If they had done this at any time from 28 April onwards they would have found that the report was available there.
8. As to 4b) above, my appeal decision explains in detail why the Council's reason for refusing the application did not stand up to scrutiny as a matter of fact and on the interpretation of planning law. In addition, the appeal was unreasonably defended because, if the Council's case had been properly reviewed after the appeal had been received, it would have been obvious that it had no prospect of succeeding. In these respects, the Council behaved unreasonably and this directly caused the applicant to incur unnecessary or wasted expense because the entire appeal could have been avoided.
9. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified. I have therefore allowed the application for costs and made the costs order set out above.

D.A.Hainsworth

INSPECTOR