
Costs Decision

Site visit made on 29 March 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Costs application in relation to Appeal Ref: APP/T5150/X/22/3313869 4 Bertie Road, London NW10 2LH

- 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 Mr Pritesh Patel for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of the Council to grant a certificate of lawful use or development for the conversion of a dwellinghouse to a Class C4 HMO.
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Decision

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

Reasons

2. The costs application is made on the basis that the applicant has been put to unnecessary expense, by having to seek professional advice from counsel and planning consultants, as a result of the Council's unreasonable refusal of the application.
3. The refusal is said to be unreasonable because the Council had made assumptions that the HMO use had already commenced at the date of the application; that the stated number of proposed occupiers could be exceeded; that no attempt to engage with the appellant took place; and that reliance was placed on departures from previously approved plans.
4. In response, the Council say that they could not be certain what the intentions for the application site were, in view of the departures from the floorplan layout; that the planning agents were actively corresponded with; and the Council has not acted inappropriately but has simply determined the application on its merits.
5. In my substantive decision I disagree with the Council that there was sufficient evidence of an HMO use having already begun at the date of the application. However, this is an issue where the onus of proof lies upon the appellant, and it is quintessentially a question of planning judgement. In order to find the Council's behaviour to have been sufficiently unreasonable to justify an award of costs, I should need to find that the Council's judgement on this issue was an unreasonable one.
6. The Council was faced with a property undergoing renovations where the floorplan layouts differed from those shown in previously-approved schemes. I do not therefore think it was unreasonable for the Council to conclude that the property renovations were potentially being undertaken with a view to starting

an HMO use. Where I depart from their assessment is in whether that use had already been begun, by reason of the works being undertaken.

7. Unlike the Council at the time of considering the present application, I have had the benefit of subsequent declarations by the applicant made on the related application and subsequent appeal to the effect that the C3 use of the property has continued. On the basis of the information then available to the Council, however, I do not find it was unreasonable for them to conclude that it was unclear whether the C3 use was continuing, in the face of the renovation works then being undertaken. Although I have ultimately disagreed with that assessment, in the light of the burden of proof resting upon the applicant in such applications, I do not find their refusal to have been unreasonable, or therefore for any appeal costs to have been unreasonably incurred.
8. In any event, the applicant for costs is not the appellant in the case. Had I found the Council's behaviour to have been unreasonable, I should not have been able to find that the applicant has been put to unnecessary expense as a result, because the appeal was brought (by retrospective agreement) by a different party. There has been no request to substitute the applicant for costs.

Conclusion

9. For the above reasons I refuse the application for an award of costs.

Laura Renaudon

INSPECTOR