

Costs Decisions

Site visit made on 4 January 2023

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2023

Costs application A in relation to Appeal Ref: APP/L5810/W/21/3289357 341 Upper Richmond Road West, East Sheen, London, SW14 8QN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mike Curran for a full award of costs against Richmond Upon Thames London Borough Council.
 - The appeal was against the refusal of prior approval for the partial change of use of the ground floor at 341 to residential use.
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Costs application B in relation to Appeal Ref: APP/L5810/X/21/3289354 341 Upper Richmond Road West, East Sheen, London, SW14 8QN

- 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 Mike Curran for a full award of costs against Richmond Upon Thames London Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the creation of a mezzanine floor.
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Costs application C in relation to Appeal Ref: APP/L5810/X/22/32900451 341 Upper Richmond Road West, East Sheen, London, SW14 8QN

- 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 Mike Curran for a full award of costs against Richmond Upon Thames London Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the addition of a mezzanine floor to consented ground floor studio flat upon the establishment of residential use.
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Decisions

Application A

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

Application B

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

Application C

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

Application A

Reasons

4. The Planning Practice Guidance (PPG) advises¹ 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.
5. It will be evident from my decision that I agree that the initial plans in conjunction with the submitted supporting statement were sufficient for the purposes of meeting the application requirements set out in sub-paragraph 2 of Class W of Part 3 of Schedule 2 of the GPDO².
6. Nevertheless, following the Council's rejection of the initial drawings, the applicant subsequently submitted amended plans. By doing so, it raises the question as to whether he initially accepted that the Council did not have all of the required information to trigger the start of the statutory period for determination, and, more pertinently for the purposes of this application, whether the Council may have assumed the applicant's position to be just that.
7. Moreover, my attention has not been drawn to evidence which shows that the Council had made its decision in the knowledge that the applicant considered it to be outside of the statutory period, as suggested. That the Council did not apply the principles of *Murrell*³ is unfortunate but that does not amount to unreasonable behaviour in the circumstances explained.
8. I note the applicant's criticisms of the Council for not making a site visit to confirm or otherwise a residential use of the unit. However, notwithstanding how the Council may have subsequently dealt with later applications, the applicant's supporting statement referred to prior approval reference 20/1405/GPD13 as being 'implemented'. It also refers to the approval as 'spent' as the material change of use of part of the ground floor from former A2 to C3 use had occurred. Those terms are categorical. Therefore, it was not unreasonable for the Council to conclude that the unit was already in residential use and in conflict with Condition M.2(1) of Part 3 of Schedule 2 of the GPDO, which states that development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval will be required.
9. It follows that it wasn't unreasonable for the Council to advise the applicant that the application could not be considered under the prior approval route and to subsequently refuse the application for the reasons it did. The only issue is that it did not do so in the statutory time period, which I have considered above.
10. I note the applicant argues that the Council had acted in an inconsistent manner. However, to state in his appeal submission that the prior approval scheme was never implemented, completely contradicts the information he submitted with the application.

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

³ *Murrell v SSCLG* [2010] EWCA Civ 1367

11. The applicant further argues that because the mezzanine over the previously approved studio flat also extends beyond that application site and into the adjoining commercial floor space, there would be a further change of use and a different scheme of residential accommodation to that which was previously approved.
12. However, whilst they are evidently different schemes, there is significant overlap between them, such that one cannot be readily severed from the other. Consequently, as a matter of fact and degree, to begin to create the approved scheme will inevitably begin the appeal scheme. The Council's position was not therefore unreasonable.

Conclusion on Application A

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Application B

Reasons

14. The applicant highlights that whilst the Council refused the application subject to Appeal A, stating that residential use had started without any means of confirming the same, it later refused the application subject to Appeal B, mentioning that it did not accept that the residential use had indeed started. The applicant refers to the Council stating that at the time of application it had not received confirmation of the completion of the development and therefore it was unclear whether the residential unit submitted as 'existing studio flat' could be considered to be lawfully in (C3) use.
15. Firstly, as set out above, in the supporting statement for the application subject to Appeal A, the applicant had already categorically confirmed that the change of use to residential had occurred. To then deal with the application on that basis cannot amount to unreasonable behaviour.
16. In terms of the application subject to Appeal B, as explained in my decision, where prior approval is expressly granted, as in the residential studio unit prior approval scheme, the development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact permitted development.
17. Whilst I agree that a site visit could have confirmed whether the development was lawfully implemented, it is important to highlight, that for a LDC application, the onus lies squarely with the applicant to make his case on the balance of probabilities, and it was he who confirmed that it had not been implemented, in this particular case. Therefore, it cannot be unreasonable for the Council to conclude that the residential use was not lawful. Indeed, that position is consistent with my own decision on Appeal B.
18. Moreover, even if the residential use had been lawfully implemented, the residential use of the proposed mezzanine would not have been lawful as it would have extended into a separate commercial planning unit, thereby requiring planning permission for a material change of use. The Council's second reason for refusal is consistent with my decision in that regard, and as such is not unreasonable.

19. The applicant states that it would have been more cooperative for the Council to use an appropriately worded condition to state that the mezzanine floor would be lawful as long as there would be no overlap between the two uses. However, notwithstanding that a LDC cannot be granted subject to conditions, as explained, the Council correctly found that no part of the proposed mezzanine could be lawfully used for residential purposes at the time of the application. Consequently, the description of the LDC could not have been amended to reflect the terms of the suggested condition.
20. It will be evident from my Appeal B decision that although I have not found the residential use to be lawful, I have found that the creation of the mezzanine would be. I have granted the LDC on that basis, which is consistent with that originally sought. I appreciate that it was the Council who effectively sought to expand the scope of the application to reflect a proposed residential use of the mezzanine, as shown on the plans, nevertheless, the applicant agreed to change the description of the LDC, even if he did so to avoid delays and to be cooperative.

Conclusion on Application B

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Application C

Reasons

22. The application, subject to Appeal C, was accompanied by a supporting statement and site location plan highlighting the entire site in red, including external areas, and a rectangular shape in blue. The Council's reason for refusing the application is that in the absence of sufficient information detailing the siting of the proposed mezzanine level and the consented ground floor studio flat, there was insufficient evidence to confirm the lawfulness of the proposed works.
23. Whilst somewhat of a moot point for Appeal C (because the applicant has subsequently submitted annotated plans), the plans and supporting statement were sufficient for the purposes of the application. Nevertheless, as explained, for a LDC application, the onus is on the applicant to provide information that is sufficiently precise and unambiguous. Moreover, s192(2) states that *if the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*
24. Within that context, the Council draws attention to the 'Guidance on information requirements and validation' which states that the application site should be clearly edged in red and a blue line should be drawn around any other land owned by the applicant. On that basis the Council considered the application to relate to all of the land within the red line boundary, which does not benefit in its entirety for planning permission for residential use. On balance, such concerns were not unreasonable.

Conclusion on Application C

25. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Richard S Jones

INSPECTOR