



Costs Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Costs application in relation to Appeal Ref: APP/P5870/X/22/3313405 2 Wood Street, Mitcham Junction, Sutton CR4 4JS

- 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 Samuel Spitzer, Sunshine UK Estates Ltd for a full award of costs against the Council of the London Borough of Sutton (the LPA).
 - The appeal was against the refusal of a certificate of lawful use or development for the erection of a rear and rear/side ground floor extensions; a hip-to-gable; rear roof dormer; front rooflights; and rearrangement of the 8 room HMO internal layout.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The LPA refused the LDC application on the basis that they considered the development was not lawful, as the property did not constitute a dwellinghouse for the purposes of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) and therefore the proposed operations were not permitted development under Class A, B and C of Part 1 of Schedule 2 of the GPDO.
4. In its officer report for the LDC application, the LPA indicate that it had received and considered the *Brent*¹ judgement in which the court endorsed the approach in the Planning Inspectorate guidance note: Houses in Multiple Occupation and Permitted Development Rights, 15 January 2014. The court held that the note accurately records that an HMO may have the benefit of the permitted development rights attaching to dwellinghouses, if it is itself a dwellinghouse. The judgement sets out that the guidance also reflects the fact that an HMO may be a dwellinghouse even if it is not in C4 use (as C4 use requires no more than 6 residents to use the dwellinghouse). Ultimately, the Court endorsed the finding that the *Gravesham*² test must be applied to any HMO to determine whether it is in fact a dwellinghouse.

¹ *London Borough of Brent v SSLHC and Rothchild* [2022] EWHC 2051 (Admin)

² *Gravesham BC v SSE & O'Brien* [1983] JPL 306

5. However, in its officer report, the LPA stated that the High Court's ruling submitted was derived exclusively from the context of Use Classes C3 and C4 and thus found the case law to have limited, if any, relevance in this case of a large HMO, which falls within Sui Generis use class.
6. The LPA's position is clearly contrary to what the court plainly held in the *Brent* case. The fact that the HMO here was a sui generis use did not automatically mean it was not a dwellinghouse for the purpose of the GPDO. As was held in *Brent*, a judgement should have been made whether the property was a dwellinghouse having regard to the tests in *Gravesham*. The LPA did not undertake that exercise. The LPA maintained that position in its appeal statement.
7. The Guidance states that LPA's are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, acting contrary to, or not following, well-established case law. In the case before me here, the LPA have clearly failed to follow and have ignored the case law presented to them in failing to undertake the assessment against the *Gravesham* test as endorsed by the *Brent* case. I find, therefore, that the LPA have acted unreasonably on that basis.
8. Had the LPA undertaken the relevant assessment as endorsed by case law, it may have reached a different conclusion on the LDC application and the need for an appeal would have been avoided. As a result, the appellant has incurred waste expense in undertaking the appeal process.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Sutton shall pay to Mr Samuel Spitzer, Sunshine UK Estates Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council of the London Borough of Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Whitfield

INSPECTOR