



Costs Decision

Inquiry held on 17 October 2023

Site visit made on 17 October 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Costs application in relation to Appeal Ref: APP/L5240/X/22/3304649 20 Langdale Road, Thornton Heath CR7 7PP

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by London Borough of Croydon for a full award of costs against Homeconnection UK Limited.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for the use of the building as 4 self-contained flats.
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Decision

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

Submissions by the Council and the response by Ms Ezeh of Homeconnection UK Ltd

Submissions for the Council (made orally at the Inquiry)

2. The Council seeks a full award of costs in relation to the behaviour of the appellant. Unreasonable behaviour has been substantive, in that it relates to the issues arising from the merits of the appeal. One of the examples given in the Planning Practice Guidance (PPG) is where the evidence is obviously insufficient.
3. It is clear that the appellant's agent misunderstood what had to be demonstrated and the need to show that all four flats were lawful with reference to the relevant four-year period.
4. Most of the evidence provided does not cover the relevant period and does not address all four flats. This error by the appellant's agent was then repeated in relation to the Inquiry. The appellant has been able to assist only with Flat 4. It was unreasonable to appeal on the basis of a flawed understanding of the relevant test.
5. Costs have therefore been incurred in resisting the appeal that could have been avoided, and a full award of costs is therefore sought.

The response by Mrs Ezeh (made orally at the Inquiry)

6. She was not clear what evidence should have been provided and has provided what she is able to. She cannot ask tenants to provide their bills and does not have Assured Shorthold Tenancies for each period as they were renewed on a rolling basis. She does not think she should have to pay costs as she has provided what she can in terms of evidence.

Final response for the Council (made orally at the Inquiry)

7. The appellant's response has confirmed that the appeal was unreasonable.

Reasons

8. Parties in planning appeals normally meet their own expenses. However, the PPG 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.
9. The PPG advises that an appellant is at risk of a substantive award of costs if the appeal had no reasonable prospect of succeeding¹. In an LDC appeal, the onus of proof on matters is on the appellant. The appellant misunderstood the case that needed to be made out and focused on providing evidence relating to Flat 4 rather than each flat, as she considered that the Council had conceded that three of the flats had already gained immunity from enforcement action.
10. However, neither the Council's Officer Report nor their Appeal Statement indicated that the Council had accepted the lawfulness of any of the flats. The appellant was unclear as to the nature of the information that she could provide to support her case. Nonetheless, evidence was provided in relation to all four flats. Moreover, I acknowledge that Mrs Ezech was not represented at the Inquiry and while ensuring that the principles of fairness are afforded to all parties, I consider that she should be afforded some consideration in this context.
11. It will be seen from my decision that I have found the evidence provided by the appellant does not meet the standard of the balance of probabilities. However, the appellant provided additional information to support their appeal, provided a proof of evidence and attended the inquiry. There was therefore some evidence to support the appellant's case. Although the evidence was not fully detailed and was at times inconsistent, I do not regard these limitations as rendering the evidence entirely contrary to the aims of the costs regime as expressed in paragraph 28². I therefore conclude that the appellant did not behave unreasonably in regard to the substantive aspect of the appeal. As a result, the issue of whether her actions in this respect gave rise to wasted expense do not fall to be considered.
12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

N Thomas

INSPECTOR

¹ Paragraph: 053 Reference ID: 16-053-20140306 Revision date: 06 03 2014

² Paragraph: 028 Reference ID: 16-028-20140306 Revision date: 06 03 2014