



Costs Decision

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Costs application in relation to Appeal Ref: APP/U5930/X/23/3321092 63 High Street, London, E17 7AD

- 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 Mr Ansar Mahmood for a full award of costs against Waltham Forest London Borough Council.
 - This was in connection with an application for a Lawful Use or Development Certificate for use of premises as a mixed-use comprising restaurant/café and shisha garden (Use Class Sui Generis).
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Decision

1. The costs application is refused.

The submissions

2. The submissions for the appellant and Council were made in writing.

Reasons

3. The Planning Practice Guidance 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.
4. Costs can only be awarded in relation to unnecessary or wasted expense in the appeal, but behaviour and actions at the time of the application can be taken into account in deciding whether or not costs should be awarded. The appellant says there was failure to determine the application and no reasonable explanation was given.
5. The applicant says that the Council delayed development which clearly should have been certified. It failed to produce evidence to substantiate its reasons with generalised and inaccurate assertions as to the evidence and its value.
6. I acknowledge that there was delay in considering the application, which the Council explain was caused by staffing issues and an administrative error. It also notes some difficulties in relation to the Section that the application was made under. While this was the case, costs can only relate to the appeal itself, and while there was the delay previous to the appeal, the Council has given reasons why there was delay, and also given a clear reason why it would have refused the certificate had it made the decision. In these circumstances the appeal would have been necessary in any case.

7. There seems to have been some confusion on the part of the appellant in seeking an LDC under Section 192, which is for proposed uses. The essential argument made by the appellant is that the use has been in existence for 10 years, so has become lawful by the passage of time and has not been abandoned since. The Council was correct in seeking it to be determined under Section 191. It is also for the Council to decide the weight to give evidence, and giving less weight to unsworn evidence is reasonable.
8. The Council has made a clear case, identifying the reasons it considers that the LDC should not be given. I have sided with the appellant in relation to the appeal, but that does not make the Council's case unreasonable.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Graham Dudley

Planning Inspector