



Costs Decision

Site visit made on 31 October 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2023

Costs application in relation to Appeal Ref: APP/E5900/C/23/3321271 Land at 504 Roman Road, London E3 5LU

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Tower Hamlets for a full award of costs against Mr David Ian of Wellhill Estates Limited.
 - The appeal was against an enforcement notice alleging the material change of use of the ground floor rear shop area (use class E) of the premises to a residential use (use class C3a).
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Decision

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

The submissions for the Council of the London Borough of Tower Hamlets

2. The Council's case is briefly that the appellant is at risk of an award of costs where the appeal has no prospect of succeeding. In this case the Council's photographs contradict the appellant's version of events.

The response by Mr Ian of Wellhill Estates Limited

3. Mr Ian was unaware of the flat created by Mr I. Nevertheless, he sought to gather and submit as much evidence as he could to regularise the situation and bring the flat up to standard. His understanding was that redecoration and even significant renovation to bring a property up to standard does not represent an end of the residential use. On the basis that the test to be met was "on the balance of probability" he believed, not unreasonably, that with all his evidence the balance would be in his favour.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process. The Guidance has replaced Circular 03/09 referred to by the Council.
5. The Guidance is clear that there is a right of appeal and this is expressly reiterated in respect of enforcement notices. In the circumstances that the appellant found himself, it is unsurprising that he exercised that right, given that the flat is occupied by tenants.
6. He was also entitled to choose his grounds of appeal and, in this case, he recognised that in making an appeal on ground (d), the onus of proof was on

him. To that end he endeavoured to tell me everything he knew about the premises and engaged a professional to represent him. He obtained statutory declarations from everyone involved where he could and letters, emails and assorted documents to verify other points.

7. The appellant's case was well made. Whilst I have reached a different conclusion, having regard to the law, as set out in my decision, that does not make it unreasonable to put forward an alternative case on a different interpretation of planning law.
8. Although I was not satisfied that the appellant had made the correct interpretation on when the four year immunity period stopped and started, it does not follow that the appeal on ground (d) had no prospect of success.

Conclusion

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

D Fleming

INSPECTOR