



Costs Decision

Hearing held on 7 February 2024

Site visit made on 7 February 2024

by Graham Dudley BA (Hons) Arch Dip Cons AA

an Inspector appointed by the Secretary of State

Decision date: 06 March 2024

Costs application in relation to Appeal Ref: APP/X5990/X/22/3313732 9 Cumberland Street, LONDON SW1V 4LS

- 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 the appellant against the City of Westminster Council for a full award of costs.
 - The hearing was in connection with an application for a LDC for the confirmation that the existing use of the appeal site is a ground floor studio flat.
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Decision

1. The costs application is refused.

The submissions

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

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.

Appellant's Case

4. The Council did not make its decision within the statutory time frame. The Council did not make comments from the environmental health team available to the appellant until well after they were produced. Information was not downloaded to the system and was backdated. The environmental health team comments were the primary reason for refusal and main part of the Council's case and should have been made available to the appellant to comment on. Additional information relating to service charges and telephone statements were not uploaded on the system.
5. The Council relied on planning merits in its determination and also referred to irrelevant matters, such as the appellant's financial means and ownership of other flats.

Council's Case

6. The appellant refers to some matters relating to the application and not the hearing. It is matters related to the hearing that are relevant to whether costs are justified or not. The Council has taken into account all the evidence submitted with the application and this is responded to in its statement of case. The Council has cooperated and attended a site visit to better understand the appeal site.
7. At the time the application was determined, the evidence provided shows that the unit in question cannot provide the physical characteristics that would allow it to fit within Class C3 and the evidence is insufficient and imprecise to demonstrate 4 years of continuous use.

Reasons

8. The appellant argues many matters relating to the application stage, which can be taken into account in relation to the appeal, for which the costs claim relates. The Council has responded in relation to the appeal in a reasonable manner. I accept there may have been some delays in the application process, but had the Council responded in a more timely manner with information that the appellant requested, it is my view, that the appeal would still have gone ahead, as it did, so no time was wasted in relation to the appeal.
9. While the appellant argues that the Council did not download information to the system and backdated information, the Council say that was not the case. This is a matter more appropriately taken up with others, but has not had a significant effect on the hearing or expense.
10. The appellant says the Council unreasonably took into account the appellant's means. The appellant has now explained that the other flats, although owned by him, were not available to him, as they were his business. However, it was not unreasonable of the Council to take this into its overall consideration in terms of whether 1A was in continuous use. It is also relevant whether this is a 'London' home. If it were a 'second' home to one outside London or abroad, the pattern of use could be quite different from a sole home and again relevant to considerations.
11. I accept the Council has referred to its standards in relation to the consideration of the unit itself. However, I do not consider that the evidence shows that because it did not accord with the space standards in its policies, it was concluded that it was not a dwellinghouse. In my view, the references were simply for comparison purposes to indicate how far from these the unit was. The reasons are clear in the Council's reason for refusal of the application, and these reasons do not refer to policy. The evidence does not indicate that this was judged on the basis of policy.
12. I therefore find that there has not been unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance.

Graham Dudley

Planning Inspector