



Costs Decision

Site visit made on 5 August 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Costs application in relation to Appeal Ref: APP/C5690/W/24/3341473 422 Lee High Road, Lewisham, London SE12 8RW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Sara Friedman of Eastview Properties Ltd for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against a refusal of prior approval for change of use of ground floor from Class E to C3 use to provide x1 studio flat.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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.
3. In my main decision I have found that the Council issued its Decision Notice outside of the statutory period under Article 7(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Consequently Prior Approval was deemed to be granted for the proposal and an appeal would be unnecessary for the proposal to be lawfully implemented.
4. Following receipt of the Council's Decision Notice the applicant made repeated efforts to address this matter with the Council prior to making the appeal. This included email exchanges and the submission of an annotated calendar demonstrating that the Decision Notice was issued outside the statutory period.
5. However, the Council did not alter its position with regard to the statutory period, and instead advised the applicant that any works undertaken in connection with the proposal would not have consent and would be referred to its Planning Enforcement Team to investigate. Furthermore, on several occasions the Council advised the applicant to make an appeal if they disagreed with its interpretation of the legislation. Consequently, I am satisfied that it was reasonable for the applicant to make an appeal in this case.
6. With regard to the statutory period, the Council's position is indefensible. The Decision Notice was clearly dated outside the relevant statutory period and so prior approval is deemed to have been granted. Despite the efforts of the applicant to explain the situation, the Council has maintained its position in both its appeal statement and its costs application response.

7. I am somewhat at a loss to explain the Council's behaviour. The applicant has suggested that the Council may have overlooked that 2024 is a leap year, as a possible explanation for their mistake with the statutory period. I sincerely hope that this is the case. However, regardless of the reason for the Council's error, its obdurate behaviour in refusing to accept this mistake was both foolish and wasteful.
8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore justified.

Costs Order

9. 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 Lewisham shall pay to Mrs Sara Friedman of Eastview Properties 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.
10. The applicant is now invited to submit to the Council of the London Borough of Lewisham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Parkin

INSPECTOR