



Costs Decision

No site visit required

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Costs application in relation to Appeal Ref: APP/D1780/C/23/3314812 59 Portswood Road, SOUTHAMPTON, SO17 2FT

- 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 Southampton City Council for a partial award of costs against S Properties Limited
- The appeal was against an enforcement notice alleging material change of use of the land to five self-contained flats.

Decision

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

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. The Council have accepted the appellant's evidence concerning the use of the property as 5 flats for a period of over 4 years. They argue this information should have been provided before the enforcement notice was issued as it would have avoided the need for an appeal. The appellant's response is that they are not obliged to apply for an LDC. The issue of an enforcement notice is discretionary and the Council could have asked for more information by using a PCN. The appellant cannot be blamed for defending the enforcement notice by going to appeal.
4. I agree with the appellant that they cannot be forced to apply for an LDC and normally a Council would expect to meet the costs of defending their issue of an enforcement notice. I accept that the Council's summary of the process that led up to the issue of the enforcement notice, which has not been challenged, shows considerable delay and apparent foot-dragging by the appellant, but the delays before the issue of the notice are not a matter before me. How long the Council allow negotiations to drag on is matter for them.
5. When the appellant's statement was made it contained copies of Assured Shorthold Tenancies for all the flats for more than four years, but all were to a single tenant Tomasz Westrych, who ran a company JoandTom Ltd who in turn sublet the flats to individual tenants. The Council pointed out this did not suggest the flats had been continuously occupied by anyone. The appellant then asked for either more time to obtain the actual agreements between JoandTom Ltd and the tenants themselves, or for the appeal to be held in abeyance while they pursued an application for an LDC. Once the further

tenancy agreements were received, long after the time for final comments, the Council accepted they did show 4 years and that ground (d) should succeed.

6. While it may seem that all the tenancy agreements should have been provided straight away, the appellant's statement was fairly comprehensive and it was not unreasonable to rely on the evidence they provided at that stage. Even had they provided all the tenancies then, the Council would still have needed to produce their own statement and deal with the other grounds. The late arrival of the clinching evidence was unfortunate, but the appellant did explain there would be a delay and did ask for more time, so again they were not acting unreasonably.
7. I can understand the Council's frustration, that given the appellant could satisfactorily prove four year occupation it was a shame they didn't do so straight away, but it is not unusual for evidence to be provided in the manner it was in this appeal and more to the point it is not unreasonable to do so. The Council also seem to be under the misapprehension that ground (d) should not be used, in their words "*as a pseudo certificate of use application*", and that submitting evidence at 6 week stage was somehow unacceptable. There is nothing wrong with using ground (d) to demonstrate a 4 year occupancy, that is what the ground is for, nor is it wrong to provide substantive evidence for this at statement stage. Again, that is what appeal statements are for. Consequently, while the Council have been frustrated at how this appeal turned out, the appellant has not acted unreasonably, and an award of costs is not warranted.

Simon Hand

INSPECTOR