
Costs Decision

Inquiry held on 17-18 September 2024

Site visit made on 18 September 2024

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Costs application in relation to Appeal Ref: APP/R5510/X/24/3343726 126A Green Lane, Northwood HA6 1AN

- 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 Mr and Mrs D Khuller for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the Council's decision to refuse to issue a certificate of lawful use or development for the property's use as seven self-contained flats.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably in that the application was unreasonably refused, necessitating the appeal. The applicant also considered that there was a lack of objective analysis by the Council and the reason for refusal was unsubstantiated.
4. The onus of proof in dealing with s191 applications where, due to the passage of time, immunity from planning control needs to be demonstrated rests with the applicant. The burden of proof is the balance of probability and, to meet this, the evidence adduced by the applicant should be precise and unambiguous. The wording of the reason for refusal in this particular instance was merely that the applicant had failed to prove its case. This, of course, would relate to the Council's interpretation of the supporting evidence and whether its form and the way presented allowed for the Council to make a full and proper assessment.
5. The Council, in its attempt to rebut the claim made reference to a patchwork of tenancy agreements and rental evidence at the application stage and, in my main decision letter, I have described the evidence as being fragmented and less than cogent. Indeed, when giving evidence at the Inquiry, Bhavani Kumar (for the appellants), when questioned, conceded that cross reference between the bank statements and rental payments was, on the face of it, neither clear nor obvious. The Council's witness also referred to an absence of evidence,

coupled with numerous gaps in bank and rental statements, raising significant doubts as to whether the flats all enjoyed continuity of use amounting to immunity. Given the extent of the initial evidence, and the way it was presented, I share this view.

6. By the time of the Inquiry, however, full and detailed information had been provided in support of the appeal. Nonetheless, the four arch-levered files proved heavy reading and required a considerable amount of time being spent on the interpretation of their contents. Even then, the supporting evidence might have been better structured. Crucially, though, it was now sufficiently convincing as to force the Council to withdraw its objection to one aspect of the appeal.
7. For the reasons given above, I am not of the view that the appeal could have been avoided. Accordingly, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
8. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR