



Costs Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Costs application in relation to Appeal Ref APP/A5840/X/23/3325152 15 Ivydale Road, Southwark, London SE15 3DR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Roktom Care Limited for a full award of costs against the Council of the London Borough of Southwark.
- The appeal was against the refusal of a certificate of lawful use or development for 'The formation of a 6 bed HMO'.

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. Section 192 of the Act states that:
(1) If any person wishes to ascertain whether—
(a) any proposed use of buildings or other land; or
(b) any operations proposed to be carried out in, on, over or under land,
would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
4. Thus, it is clear that the procedure involves the applicant framing the question and the local planning authority answering it.
5. The PPG establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
6. Here, the application sought a certificate for 'The formation of a 6 bed HMO'. That was the description entered in the application form. It appears that some

- documentation not provided with the appeal may have been submitted to the Council. It also appears that the Council was provided with some information at a site visit. This information appears to have created some of the uncertainty that led to the Council's decision, and it would have been understandable if the Council had sought clarification from the appellant in the light of it.
7. In the event, however, the appellant provided clarification. This is set out in the planning officer's report, which says *'However, at a later stage, overwriting all their previous explanation of the nature of proposed use, the agent confirmed that the property will not be used to provide supported living accommodation C3b in any capacity, and all six rooms would be tenanted out with the appropriate tenancy agreement. It would simply comprise a 6bed HMO as stated on the plans and in the application form'*.
 8. Thus, at the point of the Council's decision, there does not seem to have been any doubt about the certificate the appellant sought. The Council could (and should) have set aside any extraneous doubts about the appellant's plans for the building, and simply answered the question posed by the application. There is no doubt as to what the answer to that question would have been, because the officer report answers it, saying 'The change from use class C3 to C4 is permitted development'.
 9. What the Council did, however, was to continue to query what the appellant sought, referring to a lack of clarity. The basis of this was the submitted floorplans, which showed Bedroom 6 to be only a very small bedroom. That, in the Council's view, was an indication that it was for use by a carer rather than a resident.
 10. However, there is simply nothing on the plans to support that view, and it was not a sound basis on which to decide that the application was not clear. Indeed, the Council itself subsequently issued a certificate, based on the same plan, for 'Use as a 6 bed House in Multiple Occupation (HMO) with no element of care provided to occupants'. Thus, it appears that the Council itself came to accept that the plan was not an indication of a care element to the proposal.
 11. From the above it appears to me that the Council acted unreasonably in not considering the particular question that was clearly posed by the LDC application. The appellant was entitled to have that question answered. The suggestion that the floor plan was incompatible with the use the appellant proposed was not an adequate justification for the Council's approach, particularly in the light of its decision on the subsequent application. The Council has not provided any statement to defend its position in relation to the costs application.
 12. It is clear that the unreasonable refusal to issue an LDC led directly to the appeal. The appellant will have incurred unnecessary and wasted expense in submitting the appeal and putting forward its case, using the services of an agent. Accordingly, an award of full costs is justified, and the application succeeds. It should be noted, however, that the award of costs relates only to the costs arising from the appeal itself, matters such as costs relating to the subsequent LDC application or delays to the project being ineligible.

Costs Order

13. 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 Southwark shall pay to Roktom Care Limited, 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.

The applicant is now invited to submit to the Council of the London Borough of Southwark, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Peter Willows

INSPECTOR