
Costs Decision

Site visit made on 7 March 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Costs application in relation to Appeal A Ref: APP/A5840/X/23/3314716 138 Rye Lane, London, SE15 4RZ

- 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 Mr Jason Hoffman 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 as the ground floor of a premises is now in Class E use.
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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 appellant argues that because the Council had already accepted the principle of a Class E use on the site it was unreasonable to refuse the LDC.
4. The LDC appeal was travelling with a s78 appeal for the use of several floors of the premises as a Class E business and the retention of bi-fold doors to the rear. The s78 application had been refused only because of concerns about the bi-fold doors. The Council had no issue with the Class E use.
5. However, as the Council say in their costs rebuttal, the merits of a Class E use are irrelevant when considering an application for an LDC. The LDC process is only to determine what is lawful on the site and for the reasons explained in my decision the Class E use was not lawful. That is quite different from saying such a use is acceptable in planning terms. The Council did not act unreasonably in refusing the LDC, indeed, on the facts of the matter they had no choice.

Simon Hand

INSPECTOR