Costs Decision

Site visit made on 6 March 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 24 March 2025

Costs application in relation to Appeal Ref: APP/V5570/X/23/3332394
710 Holloway Road, London, N19 3NH

- 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 North Derby Investment Ltd. for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the use of the property as 16 self-contained flats for a continuous period of more than 4 years.

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 they provided plenty of evidence to support the application and there was no good reason why the decision was not issued within time. The appellants waited nearly 7 months before making the appeal. They also had considerable email correspondence with the Council in which they requested updates, before making several warnings that they were considering a failure appeal. All of this was to no avail.

4. The Council respond that the evidence supplied was contradictory, in particular that the building was converted into 4 flats in 2012, and there were gaps in the evidence for the 16 flats which were not explained. The agent was asked for an explanation and for a narrative of the evidence (hence the delay) but this was not forthcoming. Hence, even if the Council had reached a decision it would have been to refuse the application. An appeal would thus have been necessary so no costs were wasted.

5. I have some sympathy with the Council that the evidence was just dumped on them with no explanatory narrative. I spent come considerable time sorting out who lived in which flat and when, which ASTs related to which person and which entries on the bank statements related to which flat – insofar as the bank statements could be interpreted at all. All this should have been provided by the appellant.

6. Part of the Council's concerns stemmed from the 2012 LDC for 4 flats. The use of the building as 16 flats only had to be demonstrated for 4 consecutive years and the appellant provided a valuation by Lloyds bank in 2014 that showed by then the

property was divided into 16 flats. So the 4 flat issue in 2012 is something of a red herring. However, having sifted through the evidence I found that some flats were subject to ASTs for every year, some seemed to have rental payments for every year, some seemed to have both or a mix of the two. It was possible, by constructing an evidential matrix to ascertain that there had been continuous occupation, albeit with the assumption that in some cases ASTs were rolled over when there was no change of tenant and in other cases they were not, and that there were two John O'Connors in different flats and the payment record was incomplete. This, however, was a planning judgment I was able to make and it was not inherently unreasonable for the Council to reach the opposite conclusion, especially as these discrepancies could have been easily explained by the appellant had he chosen to present the evidence in a helpful manner.

7. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Simon Hand

INSPECTOR