
Costs Decision

Site visit made on 30 October 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2018

Costs application in relation to Appeal Ref: APP/H0738/X/18/3205376 Flats 1 to 11, 2 Mill Wynd, Yarm, Stockton Borough TS15 9 AF

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Stockton-on-Tees Borough Council against Mr William Gate.
 - The appeal was in relation to a Lawful Development Certificate (LDC) Appeal.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

The gist of the case for the Council

3. The appeal had no merit. Despite asking for further evidence from the applicant to substantiate its case, the agent was un-co-operative and resistant to providing such information. The Council had been informed that they should seek further evidence itself, despite the onus being on the applicant for a LDC application to provide sufficient precise and unambiguous evidence.
4. Late information was then submitted in the form of tenancy agreements and these were still not sufficient to confirm the lawfulness of Flat 11. It is considered that the application and the appeal have been ill-prepared and that this has caused unnecessary loss and expense in the appeal process for the Council. Despite the lack of evidence the appellant proceeded with an appeal.

The gist of the Applicant's response

5. It is not considered that the applicant acted unreasonably. The application for the LDC was fairly made and the appellant was entitled to pursue it on the basis of the evidence initially submitted. The LPA's claim for costs has no merit. The submitted plans show the clear layout and what is claimed. This is considered, on the balance of probabilities, to be sufficient evidence and there is no evidence to rebut the claim. The LPA has not contradicted or otherwise made the applicant's (appellant's) version of events less than probable. The LPA has simply cited the lack of Council Tax records which is not considered to be sufficient. The appeal is fairly made, is far from unreasonable and the LPA costs claim should be 'thrown out'.

Reasons

6. Having considered all of the factors relating to this case, I do not consider that the appellant acted unreasonably in the appeal process. In relation to a LDC

application it is up to an applicant to decide on the evidence to be submitted. It is then a matter for the Council to decide whether or not, on the balance of probabilities, the evidence is sufficient to indicate that a use is lawful.

7. The appellant submitted the application and then submitted further information after the Council's decision had been issued. I have concluded in my appeal that the late evidence was acceptable. I have also concluded that on the balance of probabilities, the information provided was not sufficiently precise and unambiguous to indicate that Flat 11 had been in continuous residential use for the necessary relevant 4 year period. In my view, the evidence needed to be far more substantive to discharge the onus of proof. However, I do not consider that the applicant's/appellant's actions led to unnecessary loss and expense in the appeal process for the Council.
8. I acknowledge that the initial application might well have been better prepared and it seems odd that the tenancy agreements were not submitted at that time. But, even with these later submissions I concluded that the applicant's/appellant's case had not been sufficiently precise and unambiguous to justify the granting of a LDC. However, any additional time to deal with these on the Council's part was negligible and, in any case, for the reasons set out in my decision; an applicant is not precluded from submitting later information to support a LDC application.

Conclusion

9. In conclusion, therefore, although it can be unreasonable of an applicant not to submit the full information at the time, I do not consider that the actions in this instance led to any unnecessary loss and expense for the Council in relation to the appeal process in this case. I consider that the Council should be responsible for its own costs.
10. The Council's application for an award of costs, therefore, fails.

Anthony J Wharton

Inspector