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## Costs Decisions

Site visit made on 11 December 2018

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 January 2019**

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### **Costs application in relation to Appeal Ref: APP/Y9507/C/18/3195731 22c Silwood Street, Brighton BN1 2PS**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Standing for a full award of costs against Brighton and Hove Borough Council.
  - The appeal was against an enforcement notice alleging on the 17 August 2016 planning permission BH2016/02093 was granted for a change of use from six bedroom small house in multiple occupation (C4) to eight bedroom house in multiple occupation (*sui generis*), subject to 4 conditions. Condition 1 states the development shall be carried out in accordance with the approved drawings. One of those approved drawings is entitled 'proposed plans and elevations – 3559.PL.10B-7 June 2016'. It appears to the Council that the condition is not being complied with as the first floor front bedroom and bathroom have been altered to create two bedrooms and a shower room and the front second floor front bedroom and bathroom have been altered to create two bedrooms and a shower room. These alterations do not comply with the drawing. Condition 2 states the approved development shall only be occupied by a maximum of eight (8) persons. It appears to the Council that the property is occupied by nine (9) persons.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance 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 allegation notes that it appeared to the Council that the condition is not being complied with as the first floor front bedroom and bathroom have been altered to create two bedrooms and a shower room and the front second floor front bedroom and bathroom have been altered to create two bedrooms and a shower room. These alterations do not comply with the drawing.
4. The alterations were an important part of the enforcement action and the permission would not have been implemented had the layout shown in the previous planning application not been implemented as required by condition 1. The Council say that at the time of serving the notice it had no evidence that the internal layout as approved by condition 1 of the permission had ever been implemented. However, as enforcement action is a serious matter the Council has a responsibility to make reasonable enquiries. The appellant says none were made. If there is any questions the Council needs answers to prior to

enforcement action a Planning Contravention Notice [PCN] can be issued. As noted in the main decision, condition 1 does not control subsequent alterations.

5. The Council does not explain in any detail what its evidence is for considering the use of the property with 9 persons, although having increased the number of bedrooms there is reason to consider that could well be the case, but does not necessarily mean that it is so. Again this is a matter that could reasonably have been picked up in a PCN or by accessing the property. While I acknowledge that tax records are not conclusive of occupation, having subsequently seen these show 8 persons in occupation, it should lead to questions being asked about the extent of occupation. I do not consider that the Council has undertaken sufficient investigation prior to enforcement action being taken and this has led to expense for the appellant in defending the action.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

7. 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 Brighton and Hove Borough Council shall pay to Mr Standing 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.
8. The applicant is now invited to submit to Brighton and Hove Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Graham Dudley*

**Inspector**



