



# The Planning Inspectorate

EN.93.0186

An Executive Agency in the Department of the Environment and the Welsh Office

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Your Reference  
RR/CCS/RS92/064  
Our Reference  
T/APP/C/93/L2820/628864

Date **20 SEP 94**

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPLICATION FOR COSTS BY MS S STRACHAN

1. I refer to your application for an award of costs against the Council which was made at the inquiry held at Kettering on 19 April 1994. The inquiry was in connection with an appeal by Ms S Strachan against an enforcement notice alleging the making of a material change of use of 2 Gordon Street, Rothwell from a single residential dwelling to two separate flats without the benefit of planning permission. A copy of my decision letter is enclosed.
2. In support of your application for costs you referred to Circular 8/93 and stated that the Council's unreasonable behaviour had caused your client unnecessary expense. The Council had addressed the matter wrongly. They had known the correct approach all along, and changed their case at a late date.
3. In response, the local planning authority said that the basis of its case had been valid. Your client's claim had disclosed no unreasonable behaviour. Moreover your client had not mentioned Circular 8/93, let alone referred to particular paragraphs. Even if the Council had, as your client said, changed its case from what had been earlier alleged, your client had not been put to any unnecessary expense. As for its behaviour the Council had always said that the material change of use had occurred less than 4 years before the issue of the enforcement notice. The Council had always said that occupation was the test; the Council had not been aware of works to the appeal property. In the light of the court decisions referred to the Council contended that its enforcement action had been fully justified. No evidence had been forthcoming from your client about the date of the conversion works or any dates at all. Best evidence was obtainable at public inquiry, so the enforcement notice was not unreasonable. The appellant had given no detail of unnecessary expense. Although the appellant had been fully advised no case law had been adduced; the Council had drawn the Inspector's attention to the relevant law reports.
4. Your client did not reply.
5. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

100%  
RECYCLED PAPER

6. Circular 8/93 gives examples of behaviour by a local planning authority which might put it at risk of having an award of costs made against it. Your client did not refer to any such example, or say how the Council had behaved unreasonably, apart from stating that the Council had changed their argument. In the absence of any reasoned argument to support your client's claim of unreasonable behaviour, I have found nothing in the written representations, which would provide assistance to your client's claim for a costs award.

7. In the light of scant evidence from your client, about the history of the site, and the present use as 2 flats, for which no specific grant of permission has been issued, I believe that the local planning authority had no choice but, by enforcement notice, to bring the matter under formal scrutiny. My belief is reinforced by the fact that, at the inquiry, your client did not produce documentary evidence to rebut the Council's case about occupation. Indeed your client produced no documents about the history of ownership of the site, its letting or otherwise. The Council asked about Land Registry records but no information was offered by your client. To my mind it would not have been onerous for your client to have produced documentary evidence; transfers of legal estate could have provided dates, which oral evidence could augment.

8. There is another obstacle to your client's claim for an award of costs. Even if I had found unreasonable behaviour by the Council, your client failed to identify her resulting unnecessary expenditure. Your client did not reply when, in response to her claim for a costs award, the Council made this point.

9. I consider that your client failed to substantiate that, first, the Council's behaviour in this matter was unreasonable and, second, your client had, as a result, to incur any unnecessary expenditure. I therefore conclude that application by your client for an award of costs is not substantiated.

#### FORMAL DECISION

10. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Ms S Strachan for an award of costs against the Kettering Borough Council.

Yours faithfully



C G WEST LLB ACI Arb FIMgt FCIS Solicitor  
Inspector

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