Costs Decision

Inquiry held on 16 August 2016

Site visit made on 16 August 2016

by Pete Drew BSc (Hons), DipTP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 September 2016

Costs application in relation to Appeal Ref: APP/A5270/C/15/3140939
Premises known as 46 Birkbeck Road, Acton, London W3 6BQ

- The application is made under the Town and Country Planning Act 1990 [hereinafter "the Act"], sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Robold for a full award of costs against the Council of the London Borough of Ealing.
- The appeal was made against the Council's decision to issue an enforcement notice that alleged *Without planning permission, the material change of use of the outbuilding at the rear of 46 Birkbeck Road, Acton, London W3 6BQ ("the Land") to use as primary living accommodation not ancillary to the use of the main building at 46 Birkbeck Road*.

Formal Decision

1. I refuse the application for an award of costs.

The case for David Robold

2. The case for David Robold was made in writing and as there is a public record of that submission [Appendix 1] no purpose would be served by reciting it.

3. However that written submission was supplemented by a further submission at the Inquiry. It was said that the Council's position had changed insofar as it was only today that it had said that the previous appeal decision was material and this is now common ground. It is submitted that if this had been properly taken into account that the Council would not have issued the enforcement notice. It was also pointed out that, on behalf of Mr Robold, clarification had been sought about the wording of the notice. Finally it was observed that there were 4 people present on the Council's side and that this was worth noting in relation to the costs because it was not clear that they all needed to be there.

The response by the Council of the London Borough of Ealing

4. There seems to be a suggestion that the Council, in simply persisting with the notice, is being unreasonable. The Council has put in a detailed explanation of exactly why the enforcement notice is worded in the way that it is and shown that the reasons for wording it in that way are directly related to the facts as the Council understood them prior to the Appellant's volte face on 5 August 2016. Even if the enforcement notice is wrong it is reasonable to think that it can be amended. In the Council's view we are only where we are because of the Appellant's "*mistakes*", although for the Council it was said that it might go further than that. To clarify, the Council never said that the appeal decision was not material, but it was simply said that it had no precedent value. Finally it was said that the other 2 colleagues were here to learn how to do an Inquiry on their own. The Council had a large number of inquiries coming up because it had issued 200 enforcement notices of which 50 % had been appealed and so it needed all the help it could get. The Council was not being charged for their time. In summary the Council's actions had not been unreasonable.

The final response on behalf of David Robold

5. It was said that the Appellant would be happy with the response with regard to the other persons present.

Reasons

6. The Planning Practice Guidance ['the Guidance'] 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 or wasted expense in the appeal process.
7. I have given reasons in my main decision for finding that the enforcement notice, the subject of the appeal to which this application relates, is not invalid by reason of ambiguity or otherwise. Although the enforcement notice does need to be corrected this arises from the Appellant's actions, e.g. in responding to the PCN in the manner that he did, and so this is not a basis for finding that the Council's behaviour has been unreasonable. I have given reasons in my main decision for finding that the notice can be corrected without injustice. The response sent on behalf of the Appellant to PINS' correspondence asking for feedback on the proposed corrections gives no reason why there would be injustice from those corrections.
8. The written application for costs relies extensively on the appeal decision dated 22 December 2015, but I have dealt with this matter at length in my main decision and have given reasons for attaching that decision limited weight. Whilst that decision is material, such that I agree with the submission that it remains relevant, the Council did take the appeal decision into account in drafting the notice, the subject of the appeal to which this application relates, insofar as the period in section 4 a of the notice was changed to 10-years.
9. I have noted the exchange of emails that are referred to in paragraph 4 of the application but I reject the claim that it is inconclusive. In response to the request to withdraw the notice on the basis of the rationale in the appeal decision, the Council said it was of "*no precedent value*" and that there was a robust justification for the allegation in the re-issued notice. The Appellant might not agree with the response, but it cannot be said to be inconclusive.
10. The second notice was issued before the appeal decision was received but that notwithstanding the Council plainly took it into account in deciding whether to continue to rely on the re-issued notice. If it is being suggested that the Council is being unreasonable in persisting with the notice, then I reject that claim. The Appellant has not brought other grounds of appeal, such as (c) or (a), and so it is agreed that there was a breach of planning control and the substantive reasons for issue of the notice are not in issue, which is relevant to the question of expediency. On the evidence before the Council on the date of issue of the notice the use was not immune. For these reasons the Council's decision to continue to rely on the notice as issued was not unreasonable.

Conclusion

11. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. The application for costs therefore fails.

Pete Drew

INSPECTOR

Appendix 1: Application for costs submitted on behalf of Mr Robold at the Inquiry.