Costs Decision

Inquiry held and site visit made on 17 August 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 28 September 2016

Costs application in relation to Appeal Ref: APP/N5660/C/15/3141362
The Cricketers, 17 Kennington Oval, London, SE11 5SG

- The application is made under the Town and Country Planning Act 1990, Sections 174, 320 and Schedule 6 ("the 1990 Act"), and the Local Government Act 1972, Section 250(5).
- The application is made by the Council of the London Borough of Lambeth ("the Council") for a full award of costs against RSL (Slough) Limited ("RSL").
- The inquiry was in connection with an appeal against an Enforcement Notice alleging the unauthorised change of use of The Cricketers Public House (Use Class A4) to residential flats (Use Class C3) comprising two at ground floor level and four at first floor level.

Decision

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

The submissions for the Council

2. The costs application was made orally at the Hearing.

The response by RSL

3. The response was made orally at the Hearing.

Reasons

4. 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. The Council made specific reference to paragraphs 52[1] & 53[2] of the PPG.

5. I understand that RSL gave notice to the Council that they intended to withdraw the Ground (c) appeal on the day before the Inquiry opened. I did not receive that notification but it was clear to me from reading RSL's appeal paperwork that the Ground (c) argument was simply a misunderstanding by them regarding the Grounds of Appeal that are available. The substantive Grounds of Appeal were based solely on Ground (d) and Ground (c) should not have been specified. I do not consider that RSL's misunderstanding relating to these two separate Grounds of Appeal amount to unreasonable behaviour on their part.

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6. I have noted RSL's conduct in relation to matters arising prior to the issue of the Enforcement Notice including the failure to provide access to The Cricketers and the lack of response to the Planning Contravention Notice. I have also noted in the Appeal Decision the lack of documentary evidence to support the RSL's oral evidence at the Inquiry. Finally I have noted the Council's argument regarding concealment of the breach of planning control by RSL (a matter which I did not have to deal with in my Appeal Decision). However, I do not consider that any of these matters have resulted in the Council incurring unnecessary or wasted expense in the ***appeal process***. Had RSL been co-operative when the breach of planning control was being investigated it is clear to me that the Council would still have had to issue the Enforcement Notice to bring an end to the breach of planning control and I have no doubt that RSL would have still contested the Enforcement Notice. The lack of documentary evidence has weakened RSL's arguments in their appeal against the Enforcement Notice. As the onus of proof is on RSL this matter has not resulted in the Council incurring unnecessary or wasted expense in the appeal process.

7. I have noted that the Council consider that RSL failed to discharge the onus of proof that rests on them in relation to the Ground (d) appeal. I agree with that. However, that failure occurs in many appeals – it does not mean that appellants who fail to discharge the onus of proof have acted unreasonably. I accept that RSL made many assertions which they failed to reinforce with documentary evidence and this weakened their oral evidence.

8. I am also aware that the Ground (g) appeal was added on the morning of the Inquiry. Whilst this is unreasonable behaviour I do not consider that it resulted in the Council incurring unnecessary or wasted expense in the appeal process. It was something that could be dealt with adequately and fully by submissions and did not involve any adjournment for the Council to consider its position outside those which would normally occur.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Tim Belcher

Inspector