Costs Decision

Inquiry held on 22 & 23 February 2017

Site visit made on 23 February 2017

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 06 March 2017

Costs application in relation to Appeal Ref: APP/P1560/C/16/3149395
The Frandon Hotel, 13 Beach Road, Clacton On Sea, Essex, CO15 1UF

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Deepak Sharma for a full award of costs against Tendring District Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land from a hotel to use as a hostel for the homeless.

Decision

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

The submissions on behalf of Mr Sharma

2. The costs application was made orally at the inquiry. The main points are as follows. The Council failed to engage reasonably with the appellant. The Council has been aware of the use of the premises to house the homeless since 2002 but issued a Planning Contravention Notice (PCN) without any prior informal contact with Mr Sharma. The PCN response identified and made clear what was actually going on, even though the respondent solicitors argued a different interpretation of the use class.

3. When the enforcement notice was issued, an approach by the appellant to the Council to discuss matters, as per PINS guidance, was rejected out of hand. The PCN response had not raised the possibility of a ground (d) appeal and negotiation might have led to an application for a lawful development certificate, or for planning permission, which might have avoided the need to appeal.

4. A copy of the officer report underpinning the issue of the notice was requested but was not provided until late in the day, after the appellant's case had been prepared. This meant he was unable to address a number of matters.

5. The request for invoices of Council payments in respect of referrals to the Frandon was not provided until unreasonably late in the day. It would have been expected that the Council would have provided these as part of its case in any event.

The response on behalf of Tendring D.C.

6. The response was made in writing, with additional points made orally. The main points are as follows. The Council has a duty to address breaches of planning control and did so when it received a complaint. Thereafter, it followed the guidance. It first issued a PCN and the reply on behalf of the appellant stated the use was as a hotel, the opposite of what the appellant now contends. As the Council believed the use was as a hostel, it was reasonable to issue the notice, backed by development plan policy and the need to be mindful of time limits for immunity.

7. The Council was aware of the homelessness referrals but that did not alter its view that the use was as a hotel. Referrals are also made to other hotels and B&Bs in the area. The fact that a HMO licence was issued in 2010 did not mean it would have been aware of an exclusive hostel use before that time. The Council cannot have acted unreasonably in failing to take into account its homelessness referrals and HMO licencing before issuing the notice, or after. Mr Sharma said different things to different departments of the Council to suit his circumstances and the Council was right to treat assertions by him with caution.

8. There was no fault with the drafting of the notice and the statement of case was sufficiently detailed for it to be understood.

9. The inconsistencies between Mr Sharma's PCN response and his grounds of appeal made it inevitable that an inquiry would be held to consider the evidence. It was expedient for the Council to issue the notice, based on planning policy and not political pressure, and entirely speculative that discussions could have avoided an appeal.

10. The delay in disclosing the officer report was at a time when deadlines for statements were extended as it was thought Mr Sharma was selling the premises. The appellant's case did not change following the disclosure. Equally, the disclosure of background information relating to referrals was made in compliance with the timescale in the Freedom of Information Act 2000. The appellant could have asked for that information at a much earlier stage and would, in any event be expected to have his own financial records.

Reasons

11. 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.

12. It is not in dispute that the Council has a duty to investigate breaches of planning control. The investigation appears to have begun with a site visit and interview with the manager of the premises in February 2015. The manager could then have been expected to have liaised with the appellant. This interview was closely followed by the serving of a PCN. It was not unreasonable for the Council to then issue an enforcement notice based on what its officers had seen, heard and read of the use of the appeal premises.

13. The Council's rejection of an attempt by the appellant to discuss the matters referred to in the notice was contrary to recommended practice and in my view unreasonable. However, it is entirely conjectural as to whether such discussions might have led to the withdrawal of the notice or the avoidance of

the appeal. Given the Council's stance at the inquiry, either of those outcomes appears unlikely. The appellant's inconsistent case between his PCN response and his position at the inquiry made it inevitable in my view that there would have needed to be an inquiry.

14. The provision of both the officer's report and the information regarding invoices paid by the Council appears to me to have been unreasonably delayed, given the pressing requirement for the appellant to comply with the timetable for producing inquiry evidence. However, in respect of each document, there does not appear to have been any significant change in the way the appellant presented his case. In respect of the financial information, the appellant would reasonably have been expected to have his own business accounts, which he could have chosen to make available to the inquiry.

15. Whilst I believe the Council has acted unreasonably in failing to engage fully with the appellant, it appears highly unlikely that the appeal, and its consideration by way of an inquiry, could have been avoided. Accordingly, the appellant has not had to incur unnecessary or wasted expense in the appeal process and the application for an award of costs fails.

B.S.Rogers

Inspector