
Costs Decisions

Inquiry held on 28 February 2017

Site visit made on 1 March 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 21 March 2017

Costs application in relation to Appeals Refs: APP/P1560/C/16/3152149 & 3152150

4 Edith Road, Clacton CO15 1JU

- 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 applications are made by Mr K Knight and Mr M Mann for a full award of costs against Tendring District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging an unauthorised material change of use from a hotel to a HMO/hostel and self-contained flats.
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Costs application in relation to Appeals Refs: APP/P1560/C/16/3152145 & 3152146

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Decision

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

The submissions for Mr Knight and Mr Mann

2. The application for an award of costs is made with reference to the Government's Planning Practice Guidance (paragraph 048 ID 16 – 20140306), in that the Council should have investigated the circumstances of the case more thoroughly, particularly as the livelihood of the appellants and the homes of their tenants are at risk. It should have served another Planning Contravention Notice to establish the facts and should not have relied on hearsay. Had they done so, enforcement action could have been avoided.
3. In response to the Council's submissions, the appellants state that the application for costs results from the evidence heard at the Inquiry and could not, therefore, have been notified earlier.

The response by the Council

4. The Council relies on its opening remarks¹ and the reasons and context in which the enforcement notice was issued are set out therein.
5. The Council had issued a PCN and a 28 day letter and the case deals with factual matters concerning hotels/hostels/HMOs. The appeals were mainly proceeding on ground (d) so the evidence submitted by the appellants needed to be tested as there have been no applications for a Lawful Development Certificate or planning permission. Therefore it was not unreasonable to issue the enforcement notice.
6. The Council's evidence is given on oath by officers who visited the sites and is not, therefore, hearsay. In any event, it is not for the Council to prove anything but for the appellants to make out their case. It is also unreasonable for the appellant not to give notice of a costs application.

Reasons

7. The Government's Planning Practice Guidance (PPG) 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.
8. It also states that, when taking enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs against them if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
9. I have allowed the appeals in part only, in respect of Appeals A & B ground (b) and on all appeals in respect of the self-contained units, but otherwise the appeals fail for the reasons set out in the main Decisions. In respect of the matters on which I have disagreed with the Council, I consider that further investigation would not have avoided the need for the appeals. Both parties put forward cogent arguments to support their positions and the fact that I have found in favour of the appellants on some points does not indicate unreasonable behaviour on the part of the Council.
10. Neither were the proceedings lengthened to any great extent by discussion of these matters. The appeals were concluded within the allocated time frame and all the participants would have had to attend the proceedings in any event. Therefore I do not agree that the appeals could have been avoided by additional investigation prior to the issue of the enforcement notice. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs is refused.

Katie Peerless

Inspector

¹ Inquiry document 2