The Planning Inspectorate

Costs Decision

Site visit made on 1 May 2018

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2018

Costs application in relation to Appeal Ref: APP/V5570/C/17/3180505 & 3180507
1 Nyton Close, London N19 4BL

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr J Barrington for a award of costs against the Council of the London Borough of Islington.
- The appeal was against enforcement notices alleging the change of use of the first and second floor levels to 6 bedsits and room 1 at ground floor level to a self-contained unit.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

3. Referring to paragraph 047 of the PPG in particular, the main premise underlying the application is that the Council failed to apply due diligence when investigating the matter prior to the enforcement notices being issued and had also failed to engage with appellant then. Concern is also expressed about the lack of clarity in the notices and their defective nature.

4. The enforcement notices in question were both issued on 12 June 2017. Prior to that, as both parties indicate, the Council had carried out an inspection of the appeals property on 24 January 2017. This was followed up by a letter from the Council to the appellant dated 30 January. The time period – 6 days between the inspection and the date of the letter - was fairly short, but I do not equate this with unreasonableness on the part of the Council.

5. The letter records the nature of the Council's concern and the reasons for this in very thorough manner. The steps needed to remedy the matter are set out fully, as are the possible consequences of not doing so, including issuing an enforcement notice. I accept that no reference is made to the possibility of applying for planning permission. However, the letter does acknowledge the appellant's point about when the conversion of the property was carried out, and advises that it would be open to him to apply for a Lawful Development Certificate (LDC).

6. It seems to me that, having inspected the property and indicated that no planning permission existed for the conversion of the property, the view expressed in the Council's letter of 30 January was a matter of judgment that they were reasonably entitled to take.

7. Both parties have drawn my attention to a subsequent lengthy bout of email correspondence between the appellant and the Council spanning a period between the beginning of February 2017 and April of that year. Although a degree of exasperation can be traced in some of the individual messages from both parties, it seems to me the Council's approach followed that set out in the letter of 30 January. It may be that a face to face meeting could have proved helpful, but despite the Council's reluctance in this respect, my impression is that the overall tenor of the Council's approach was essentially cooperative. In my experience, LDC applications are customarily handled by planning officers so I am inclined to regard the enforcement officer's referral in this respect as a helpful pointer as opposed to obfuscation.

8. The application contains criticism of the Council's handling of an LDC application relating to the ground floor unit, room 1, submitted in March 2017. But, as there is no appeal before me in this respect, albeit some of the subject matter is relevant to the section 174 appeals, passing judgement on the reasonableness or otherwise of the Council's behaviour in dealing with this application lies outside the ambit of the current costs decision which relates to the section 174 appeals.

9. I appreciate that as the Council had previously advised that a Planning Contravention Notice (PCN) would be served, proceeding to issue enforcement notices instead could well have left the appellant somewhat perplexed. However, while the failure to advise the appellant of this apparent change of heart was rather discourteous, the Council were not obliged to issue a PCN; this was a matter of judgement their part, I am not satisfied that this amounted to unreasonable behaviour. The same view applies to the issuing of 2 separate enforcement notices. It would have been possible to incorporate the matters involved into one notice, but I see nothing untoward or unreasonable in the approach adopted by the Council.

10. As to defects in the notices, I have found some of the points raised by the appellant in this respect to be well-founded, and this is reflected in my decisions on the appeals. It may be that a more painstaking approach to the content of the notices might have avoided the need for their integrity to be challenged, and for the subsequent variations to them I have directed. However, as I see it, this all points to the complexities involved in drafting enforcement notices as opposed to unreasonableness in its own right.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D H Brier

Inspector